

1909-004 Chancery Causes: John M. Carter & vs. W. H. Pennington &
Lee Co.

Noel, Russell, Coffman, Zion, Cruzenberry, Cooper,
Cauffman

-Deed

CA-Estate Dispute
T-Property

To the Hon. H. A. W. Sheen, Judge of the
Circuit Court for Lee County Va.

Your petitioner E. L. Noel, sheweth
to the Court that there is now pending
in said Court on the Chancery side thereof
a suit entitled John M. Carter & E. H. Carter
against W. H. Pennington, the purpose
of which is to have partitioned a certain
tract of land known as the J. D. Penning-
ton, ^{30 acre} Mill tract of land; that since the
institution of said suit your petitioner has
purchased from the said John M. Carter
an undivided half interest in his moiety
of said land; and that the said John
M. Carter has now, no further interest
in said land. Your petitioner herewith
files a copy of her deed from said John
M. Carter & wife, marked "C", and prays
that the same may be read and treated
as a part of this petition.

Your petitioner therefore prays that she
may be made a party to said suit; and
that she may be permitted to prosecute said
suit in the place and stand of the said

John M. Carter, and that in the partition
of said land, that one fourth of said land,
or one fourth of the proceeds of sale thereof, if the
same be decreed to be sold, less a one half
of the interest of C. D. Russell in said land,
be decreed to belong to your petitioner, and
that all such other further and general
relief be granted your petitioner, as in the
premises may be just and right
and your petitioner will ever pray, etc.

J. C. Noel f. f.

John M & E. F. Carter
vs or Chancery

M. H. Pennington.
Petition of E. G. Noel.

To the Honorable H. A. W. Skeen, Judge of the circuit court for Lee County, Virginia:

The amended answer, or joint and separate answer, of W.H.Pennington and A.N.Pennington to a bill of complaint exhibited against them and others in the said court by J.M.Carter and E.F.Carter:

Respondents deny the right of the plaintiffs to have partition made of the tract of land mentioned and described in their bill, and they deny that the plaintiffs have any interest therein whatever, but on the contrary they allege and charge that the whole of the said tract of land sought to be partitioned by the plaintiffs is now the property of respondent, A.N.Pennington.

Respondents say it is true that by decree rendered in the chancery cause lately and now pending in the said court under the style of "Greer Machinery Co. vs. J. D. Pennington et al.", the said R.L. Pennington was appointed a special commissioner and as such directed to make sale, among other tracts, of the tract known as the thirty acre Mill tract of the said J.D.Pennington, and that at the sale thereof respondent, W.H.Pennington, and the said ~~J.M.~~ M. Carter became the purchasers thereof as shown by the proceedings of the said chancery cause. But respondents further say that before the said W. H.Pennington and J.M.Carter purchased the said tract of land, they agreed on a partition of the same in case they should be the accepted purchasers thereof, and after the sale thereof was confirmed to them they did mutually partition the said tract of land between them by parol agreement whereby the said Carter agreed to take and did take as his share of the said land a certain boundary thereof by definite natural bounds, containing six acres, more or less, and including a fine orchard, a very good dwelling house and stable, a good garden, and truck patches, the bounds of which tract, according to said agreement are as follows: Beginning at a rock on the North fork, thence northwardly with a plank fence to a coal road, thence with the coal road to Bob Garrett's line, near Bob Branch, and with said Garrett's line to the North Fork to a sycamore, thence with the said North Fork to the Beginning; and the said W.H.Pennington taking as his share the

remainder of the said thirty acres Mills tract of land. And pursuant to the said parol agreement of partition the said J.M.Carter took possession of the said six acres above described, and possessed, used, and had the exclusive control of the same until the 18th day of Feb. 1899, when he sold the same to one C.D.Russell, and put said Russell in possession thereof. And pursuant also to the said agreement of partition between the said J. M. Carter and respondent, W.H.Pennington, the said J.M.Carter delivered to said respondent the exclusive possession of the whole of the residue of said thirty acre tract of land. And your respondents allege that, relying on the said mutual contract of partition, they not only took possession of the whole of the said thirty acre tract, except the said six acres, but they have greatly improved and enhanced the value thereof by opening up thereon a valuable coal mine, building a costly chute from the entrance of the said mine to a point convenient for selling and loading the coal taken from the said mine to their customers, and also by building a wagon road from the county road to the said coal chute, and they have otherwise changed and improved the condition of the said land by improving the soil, fencing, fertilizing, and clearing the said land. And your respondents are advised that a court of equity, under the circumstances of this case, will specifically execute the said mutual partition, otherwise the said J.M.Carter would be permitted to perpetrate a fraud upon the rights of the said W.H.Pennington and his vendees.

And respondent, W.H.Pennington, alleges that he is ready and willing, and has so been ever since the said mutual partition, to execute the same by conveying and releasing his interest in the said six acre boundary to the said J. M. Carter, or his vendees, and he asks that the said J. M. Carter and his vendees, be required to ~~him~~ convey to him, or his vendees, the residue of the said thirty acre tract of land.

Respondent, W.H.Pennington, relying upon the said mutual partition, sold the land which he took and held thereunder to Barbara J. Pennington, and she afterwards sold the same to respondent, A.N.Pen-

nington, and the said W.H.Pennington and wife and Barbara J.Pennington conveyed the same to the said A.N.Pennington by deed dated the ____ day of _____, 19____, and recorded in Lee County Deed Book No.____ page _____, as will fully appear from an inspection of a copy thereof which is herewith filed as a part hereof marked "Exhibit A".

Respondents further say that the said J. M. Carter some time after the date of the said mutual partition and after he had taken the exclusive possession of the said six acre boundary thereunder, and delivered the residue of the said thirty acre tract to respondent, W.H.Pennington, he sold the said six acres, by title bond, to one C.D.Russell, described said land therein as being all the land he claimed of the said thirty acre tract, and afterwards the said C.D. Russell sold and conveyed the same to _____ Coffman, wife of John C.Coffman, who took possession thereof, and remained in possession thereof until the date of her death, and the same is now in the possession of the said John C.Coffman as tenant by curtesy, the said _____ Coffman having died intestate, leaving two infant children, whose names are not known, and her said husband, surviving, to whom her interest in said land descended.

And your respondents allege that the said E.F.Carter and E.L. Noel, at the time they purchased and took deeds from the said J.M. Carter, had knowledge of the said mutual partition.

The prayer therefore of these respondents is that this answer be treated as a cross bill against the said plaintiffs; that they be required to answer the same, but not under oath as that is expressly waived; and that upon a hearing of this cause the said Mutual Partition, so made as aforesaid, between the said J.M.Carter and W.H. Pennington, be specifically executed and enforced by the court, and for full general relief.

And now having fully answered, respondents pray &c.

L. P. Nyatt, p.d.

John M + E. F. Carter
vs { In Chancery.

W. H. Pennington et al.

Amended answer
and cross-bill of
W. H. + A. N. Pennington.

Filed in open court,
and by leave thereof,
Mch. 5th 1903.

A. B. Munsey Clk

To the honorable H. A. W. Skeen judge of the circuit court
for Lee County Virginia.

The joint and seperate answer of J.M.Carter and E.F.Carter and E.L. Noel to a cross bill exhibited against them by W. H. Pennington and A. N. Pennington in the chancery cause now pending in this honorable court under the stile of John M. and E.F.Carter against W.H.Pennington

Reserving the benefit of all just exceptions to said cross bill for answer thereto or to so much thereof as they are advised ~~it~~ is material for them to answer, answering they say;

That it is not true that after the said W.H.Pennington and J.M.Carter had purchased the tract of land in controversy that they made a parol agreement whereby the said J.M.Carter agreed to take and would take as his share of said land a certain boundary thereof by definite and mutual bounds containing six acres more or less and including a fine orchard, a very good dwelling house and stable, a good garden and truck patches, as set out in said cross bill, but on the contrary the only agreement between the said J.M.Carter and the said W.H.Pennington was, that the said J.M.Carter was to have the eastern half of said land, and the said W.H.Pennington was to have the western half of said land and under said understanding or agreement the said J.M.Carter sold unto one C. D. Russell about three acres of said land and bounded as follows, to wit:- begining at a rock on the North Fork thence northward with a plank.fence to a coal road, thence with the coal road to Bo^h Gilam and with said Gilam to the North Fork to a sycamore thence with the said North Fork to the beginning.

These respondants deny that the said J. M. Carter delivered unto the said W. H. Pennington exclusive possession of the whole of the residue of the said thirty acre tract of land. These respondants deny also that the said W.H. Pennington and A,N. Pennington has made any valuable improvment upon said land it is true thatt they built a cheap rough coal shute, but that they have taken from said coal to an amount more than is necessary to compensate them for any improvment they have made thereon

John M. Carter
vs Answer to Cross Bill
H. H. Pennington

Filed in open Court and
by leave thereof July 14th 1903
A. B. Mursey Clerk

Jonesville, Virginia,

1899.

#2

These respondents deny that the said E. F. Carter and E.L.Noel at the time they purchased and took deeds from the said J.M.Carter had any knowledge of any mutual partnership between the said J.M. Carter and W.H.Pennington; they were advised that there was a general understanding of contract between the said W.H.Pennington and J.M.Carter, by which the said J.M.Carter was to have the eastern end of said tract of land and the said W.H.Pennington was to have the western end thereof and had they had known or have had any intimation that there was a parole agreement between the said J.M.Carter and W.H.Pennington whereby the said J.M.Carter was to have only that part of said land which said J.M.Carter conveyed to C.D.Russell they would not have purchased any interest in said land from the said J.M.Carter.

That now having fully answered the said cross bill or so much thereof as they advise that it is material they should answer, and denying all allegations therein charged and not being specifically admitted or denied pray to be hence dismissed from said cross complaint with their reasonable cost in that behalf expended and these respondents will ever pray etc.

J. C. Noel.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for
Lee County, Virginia:-

The answer of W. H. Pennington to a bill of complaint exhibited against him in this court by John M. and E. F. Carter.

Respondent says that it is true that R. L. Pennington was appointed a Special Commissioner in the Chancery cause of Greer Machinery Company against J. D. Pennington, et al then and now pending in said court, for the purpose of making a sale of the real estate of J. D. , J. L. ,and Wm. Pennington to satisfy certain liens reported in said cause. The decree of sale in said cause gave the said defendants 60 days in which to work up sales of their lands. Accordingly the said J. D. Pennington procured respondent and the said John M. Carter to become bidders for the tract of land known in said cause as the "J. D. Pennington Mill tract", containing some thirty acres, and situated in the "Pocket Country" on the North Fork of Powell's river, near the confluence of Straight Creek with the said North Fork. It is not true that your respondent purchased from said commissioner an undivided one-half interest in said tract of land, but he bid for and understood that he had purchased the whole of the thirty acre tract, except six acres which was purchased by the said John M. Carter. It is true, however, that it was considered by the parties at the time, that your respondent and the said Carter were each getting one-half of said land; and doubtless this is the reason the sales were reported as being an undivided one-half to each. Respondent says that the said J. D. Pennington laid out by natural boundary the parcel of said land which the said Carter bid and your respondent bid for and purchased the residue of said tract.

Your respondent says that shortly after the purchase of

a said land by the said Carter he sold the land purchased by him, and all of the land purchased by him, to one C. D. Russell, and afterwards the said Russell sold the same to one John Coffman, who is now in possession of the six acres purchased by the said Carter at the said judicial sale. Shortly after the purchase by respondent of the remainder of the said thirty acre tract from said Commissioner Pennington, respondent transferred his bid to his grand-mother, Barbary J. Pennington, and afterwards the said Barbary J. Pennington being unable to pay for the said land, transferred the same to her son, A. N. Pennington, who furnished the money with which to pay for the said land; and afterwards, to-wit on the ____ day of _____, 1902, your orator and his wife and the said Barbary J. Pennington executed their joint deed to the said A. N. Pennington, whereby they conveyed to him the land purchased by your respondent from the said R. L. Pennington, commissioner, describing the same in said deed by natural boundaries.

Your respondent denies the right of the said complainant to have the said tract of land partitioned. The said John M. Carter, as before stated, only bought from the said Commissioner Pennington the tract of land which he afterwards sold to C. D. Russell, and by the said sale he parted with all interest which he had under his said purchase in the said tract of land.

Your respondent is advised that having no further interest in this cause the plaintiff should be required to amend his bill making the said A. N. Pennington a party defendant thereto, also the said Barbary J. Pennington, C. D. Russell and John Coffman if so advised.

Your orator has been informed that the said R. L. Pennington

Commissioner, has made him a deed to an undivided one-half interest in the said tract of land. Respondent has never accepted such deed, and if there is such a deed, the same is a mistake and should be corrected, and there should be conveyed to him or his vendee the land which he really purchased.

And now having fully answer the bill respondent prays to be hence dismissed with his costs, &c.

L. G. Hyatt, p.d.

*The within answer of W. H. Pennington is
expected to be by the Plaintiff, because it
attempts to attack & to collaterally a deed of
the court: And further because it shows no
matter of defence.*

J. B. Hunt, p.g.

John M + E. F. Carter
vs { In Chy.

W. H. Pennington

Answer of W. H.
Pennington.

Filed July 15th 1902.
in open court & by
leave thereof.

Enter this decree
July

3
be corrected, and there should be conveyed to him or his vendee
deed, and if there is such a deed, the same is a mistake and should
not in the said tract of land. Respondent has never accepted such
Commissioner, has made him a deed to an undivided one-half inter-

To the Honorable H. A. W. Skeen, Judge of the circuit court
for Lee County, Virginia:

1 The joint and separate answer of W.H.Pennington and A.N.
2 Pennington to a bill of complaint exhibited against them and
3 others in the said court by J.M.Carter and E.F.Carter:

4 Respondents deny the right of the said plaintiffs to have
5 partition made of the tract of land mentioned and described in
6 their bill, and they deny that the said plaintiffs have any in-
7 terest therein whatever, but on the contrary they allege and
8 charge that the whole of the tract of land so ught to be parti-
9 t ioned by the plaintiffs is now the property of respondent,
10 A.N.Pennington.

11 Respondents say it is true that by a decree rendered in
12 the chancery cause lately and now pending in the said court
13 under the style of "Greer Machinery Co. v. J.D.Pennington etal."
14 the said R.L.Pennington was appointed a special commissioner
15 and as such directed to make sale, among other tracts, of the
16 tract known as the thirty acre Mill tract of the said J.D.Pen-
17 nington, and that at the sale thereof respondentx, W.H.Pennington
18 and the said J.M.Carter became the purchasers thereof as shown
19 by the proceedings of the said chancery cause. But respond-
20 ents further say that before the said W.H.Pennington and J.M.
21 Carter purchased the said tract of land, they agreed on a par-
22 titition of the same in case they should be the accepted purchas-
23 ers thereof, and after the sale thereof was confirmed to them
24 they did mutually partition the said tract of land between them
25 by parol agreement whereby the said Carter agreed to take and
26 did take as his share of the said land a certain boundary there-
27 of by definite natural bounds, containing about six acres, and
28 including a fine orchard, a very good dwelling house and stable,
29 and good garden, and truck patches, the said W.H.Pennington
30 taking as his share the remainder of the said thirty acres
31 tract of land. And pursuant to the said parol agreement of
32 partition the said J.M.Carter took possession of the said six

And respondent W.H. Pennington alleges that he is ready and willing and has been so ever since the said mutual partition to execute the same by conveying the said six acres to said Carter or his interest therein, and he asks that said Carter be required to convey to him or his vendee the residue of said 30 acres.

33 acres and possessed, used, and had the exclusive control of
34 it until he sold the same to one C.D. Russell. And pursuant
35 also ~~xxx~~ to the said agreement of partition between the said
36 J.M. Carter delivered to respondent, W.H. Pennington, the exclu-
37 sive possession of the whole of the residue of the said tract
38 of land. And your said respondents allege that relying on the
39 said mutual contract of partition, they not only took possession
40 ion of the whole of the residue of the said tract of land, but
41 they have greatly improved and enhanced the value thereof by
42 opening up thereon a valuable coal mine, building a costly
43 chute, to a point convenient for selling and loading the coal
44 taken from said mine to their customers, and also by building
45 a road to the coal chute from the county road. And they have
46 otherwise changed and improved the condition of the said land
47 by improving the soil. And your respondents are advised that
48 a court of equity, under the circumstances of this case, will
49 specifically execute the said mutual partition, otherwise the
50 said J.M. Carter would be permitted to perpetrate a fraud upon
51 the rights of the said W.H. Pennington and his vendees.

52 ~~#~~ Respondent W.H. Pennington, relying upon the said mutual
53 partition, sold the land which he took and held thereunder to
54 Barbara J. Pennington, and she afterwards sold the same to res-
55 pondent A.N. Pennington, and the said W.H. Pennington and wife
56 and Barbara J. Pennington conveyed the same to the said A.N.
57 Pennington by deed dated the _____ day of _____, 19____,
58 and recorded in Lee County Deed Book No. _____ page _____, as will
59 fully appear from an inspection of a copy thereof which is here-
60 with filed as a part hereof, marked "Exhibit A".

61 Respondent likewise says that the said J.M. Carter some time
62 after the date of the said mutual partition and after he had
63 taken the exclusive possession of the said six acres thereunder,
64 he sold the said six acres, by title bond, to one C.D. Russell,
65 and afterwards the said C.D. Russell sold and conveyed the same
66 to one John C. Coffman.

68 to one John C. Coffman who is now in the possession thereof.)

69 And your orators allege that the said E.F. Carter and E.L.
70 Noel, at the time they purchased and took deeds from the said
71 J.M. Carter ^{had knowledge} of the said mutual partition.

72 The prayer therefore of these respondents is that this an-
73 swer be treated as a cross bill against the said plaintiffs;
74 that they be required to answer the same, but not under oath
75 as that is expressly waived; and that upon a hearing of this
76 cause the said mutual partition so made as aforesaid between
77 the said J.M. Carter and the said W.H. Pennington be specifically
78 executed and enforced by the court, and for full general relief.

79 And now having fully answered, respondents pray &c.

L. P. Heyatt, p.d.

The plaintiffs except to that part of the above
answer, embraced between the lines 19 and 68,
beginning with the words, "But respondents, etc
to thereof, as showing no grounds of defence.
no partition by coparcens except by deed, can be made.
See Sec 2413 Code.

The plaintiffs also except to that part of said
answer embraced between lines 69 and 71, inclu-
sive, as showing no grounds of defence, it nat-
ally alleging that the plaintiffs and E. L. Noel
and E. F. Carter had knowledge of the mutual
partition.

J. C. Noel, p.g.

J. M. & E. F. Carter

v { In Chy.

W. H. Pennington et al.

Amended Answer
of W. H. & A. N. Pen-
nington.

Filed in open court
v by leave thereof.

This the 14th day of Nov. 1902.

A. B. Mursey clk.

Virginia,

At a Circuit Court continued and held for Lee County, at the Court-house thereof, on Friday, the 11th day of December, 1908.

John M. Carter, et al.

Plffs.

Vs. In Chancery

W. H. Pennington, et al.

Defts.

This cause came on this day to be again heard upon the papers formerly read herein and the deposition of witnesses, and was argued by counsel. On a consideration of all which, the Court is of the opinion that the complainants are entitled to have the land in controversy to-wit: the thirty six acre Pennington Mill Tract, partition in accordance to the prayer of the complainants ~~in~~ bill and the partition filed in said cause. And it further appearing to the Court that John M. Carter, one of the complainants, has heretofore sold off to one C. D. Russell some three acres of said land on the eastern part of said tract which said three acres is now owned by one ~~John~~ John Coffman; and that the said defendants have been removing coal from the western end of said tract of land; it is therefore adjudged ordered and decreed that W. E. Thompson, C. C. Bales and A. H. Zion, who are hereby appointed special commissioners for the purpose, shall go upon the land in question, on 1st of January, 1909, or as soon thereafter as practical, and partition the said tract of land among the parties assigning to the complainants, E. L. Noel and E. F. Carter one-half of said tract of land in value and which shall include the three acres owned by John Coffman; and the other half of said land in value, they will assign to the defendant, A. N. Pennington. In making said partition the said Commissioners shall take into consideration quality of soil, location and minerals, but will not take into consideration any improvements made by either John Coffman or C. D. Russell on the said three acres now held by John Coffman. Out of the half of said land which said Commissioners shall assign to the complainants, they, the said Commissioners, shall cut out for the said John

Coffman that part of said land sold by John M. Carter to C. D. Russell, The residue of the half which they shall assign to the complainants, the said commissioners will divide into two equal parts: one-half of which they will assign to J. C. Noel and E. L. Noel and the other half they will assign to E. F. Carter.

The said Commissioners will report their action to some future term of this Court.

It is further adjudged, ordered and decreed that the complainants recover their costs from the defendant including an attorneys fee of \$15.00. But defendants are not to pay that part of the costs of partition which will arise in dividing one-half of the land among complainants.

And this cause is continued.

A copy,

Teste: H. C. P. Ewing, Clerk.

John M. Carter, et al.
vs. J. Deere

H. H. Pennington, et al.

Copy for

Sheriff's return

Executed by delivering a
True copy of the within
to W. E. Thompson C. C. Bales
and delivered a copy to A. H.
Gibson's wife at his home he
being gone to Tenn. to be
gone some 20 or 30 days this
Jan 8th 1909

L. V. Sage W. S. for W. Y.
Tucker S. L. C.

John W. Carter et al. Plffs
vs J. H. Pennington et al. Defts.
In Chancery.

This Cause came on this day to be ~~finally~~^{again} heard upon the papers formerly read ^{herein} and the deposition of witnesses; and was argued by counsel. On consideration of all which, the Court is of the opinion that the Complainants are entitled to have the land in Controversy, to wit: the Thirty Six Acre Pennington Mill Tract, partitioned in accordance to the prayer of the Complainants bill and ~~the prayer~~ of the petitions filed in said Cause. And it further appearing to the Court that John W. Carter, one of the Complainants has heretofore sold off to one B. D. Russell some three acres of said land on the eastern part of said tract, which said three acres is now owned by one John Coffman; and that the said defendants have been removing Coal from the western end of said tract of land; it is therefore adjudged ^{ordered and decreed} that W. E. Thompson, C. C. Balis

and A. H. Zion, who are hereby, appointed Special Commissioners for the purpose, shall go upon the land in question, on 1st day of January, 1909, or as soon thereafter as practicable, and partition the said tract of land among the parties, ~~but so as~~ assigning to the complainants, E. G. Noel and E. H. Carter one half of said tract of land in value and which shall include the three acres now owned by John Coffman; and the other half of said land in value they will assign to the defendant H. R.

Pennington. Making said partition the said Commissioners shall take into consideration, quality of soil, location and minerals, but will not take into consideration any improvements made by either John Coffman or C. D. Russell or the said three acres now held by John Coffman. Out of the half of said land which said Commissioners shall assign to the Complainants, they the said Commissioners shall cut out for the said John Coffman

that part of said land sold by John M. Carter to E. D. Russell. The residue of the half ^{which} they shall assign to the Complainants, the said Commissioners will divide into two equal parts; one half of which they will assign to J. B. Noel and E. L. Noel, and the other half they will assign to E. F. Carter.

The said Commissioners will report their action to some future term of this Court.

It is further adjudged, ordered and decreed that the ~~the~~ Complainants recover their Costs the defendants, including an attorneys fee of \$15.00. But defendants are not to pay that part of the Costs of partition which will arise in dividing one half of the land among Complainants.

And this Cause is continued.

John M. Carter, et al
vs { du Cheneery

W.H. Pennington, et al.

Decree

Entered in C.O.B.
#8, page 421 ve.

Enter this decree
This Nov. 11th 1908.

HAWSTICK
Judge.

John M. & C. F. Carter Plffs
vs. { In Chancery
W. H. Pennington Deft.

On the calling of this cause, the
plaintiffs, by counsel, moved for a
continuance, to which the defendant
by counsel objected and on con-
sideration thereof it is ordered
that the cause be continued until
next term.

John M. T. & S. Carter
vs S. Du Chy
L. H. Pennington
et al

Deeree

Entered in C. B.
8, page 231 -

Haw Stun

Enter Dec 11 1906

John M. & E. F. Carter Plff }
W. H. Pennington Def } In Chancery.

This cause came on this 14 day of July 1903, to be again heard upon the complainant's bill and the exhibits filed therewith, ^{and the petition of E. L. Noel} the answer of W. H. Pennington and E. L. Penning, and the general replication thereto, and the cross bill of W. H. Pennington. And was argued by counsel; and by leave of the court, John M. Carter, E. F. Carter and E. L. Noel, were permitted to file their answer to said cross bill; and to which the defendants replied generally. And this cause is continued.

John M. & E. F. Carter
vs. Decree

W. H. Pennington et al.

Ex. C. O. B. 7 p. 343.

Enter this decree.

H. A. W. Dean
Judge.
July 14, 1903.

John M. and E.F. Carter, Plaintiffs.

vs. (((In Chancery. ----Decree No.3.

W.H. Pennington et al., Defendants.

On motion of the plaintiffs, leave is granted them to file exceptions to the answer and cross-bill of W.H. and A.N. Pennington filed on the 14th day of November, 1903, which exceptions are endorsed on the foot of said answer and cross-bill. And thereupon this cause coming on this the ~~14~~¹¹th day of March, 1903, to be heard upon the said exceptions, was argued by counsel. Upon consideration whereof, the court is of opinion that the first exception is well taken, and that the said defendants should amend the said answer and cross-bill and state therein the boundary of the six acres alleged to have been partitioned, by parol, to the said John M. Carter, but the court is of opinion that the second exception is not well taken; and it is therefore adjudged, ordered and decreed that the said defendants so amend their said answer, if so advised.

And thereupon the said defendants asked leave of the court to file an amended answer and cross-bill, containing the allegations of boundary in conformity with the said opinion of the court, which leave is granted them, and the said answer and cross-bill is accordingly filed, and the said plaintiffs replied generally to the said answer.

And it appearing to the court ~~that~~ from the said answer and cross-bill of the said W.H. and A.N. Pennington that two infant children of _____ Coffman, whose names are not now known, are interested parties, having an interest in the said six acre boundary of land, it is further ordered that the plaintiffs amend their bill making the said infants parties to this suit. And the said amendment being made at bar, on motion of the said plaintiffs H.O.

Ballou is appointed guardian ad litem for the said infants.

And on motion of the said guardian ad litem, leave is granted him to file the answer of said infants, which is accordingly done, and the plaintiffs replied generally to the said answer.

And leave is granted the plaintiffs to file an answer to the said cross-bill of A.N. & W.H. Pennington at second April Rules, 1903. And the cause

is continued.

John M. Carter et al
v { In chy.

W. H. Pennington et al.

Decees & outd

Ent. Co. B, 7 P 2 93.

Enter this decree

March 11, 1903

H. A. W. S. L.

John M. and E.F.Carter,Plaintiffs.

vs. In Chancery-----Decree.

W.H.Pennington, A.N.Pennington, C.D.Russell, John Coffman and
Barbara J.Pennington,Defendants.

This day came the plaintiffs, by counsel, and asked leave of the court to file exceptions to the answer of W.H.Pennington heretofore filed in this cause, which leave is granted, and said exceptions are accordingly filed.

And on motion of the defendant, A.N.Pennington, by his counsel, leave is granted him to file his separate answer to the said bill, and said answer is accordingly filed; and on motion of the plaintiffs leave is granted them to file exceptions to the said answer of the said A.N.Pennington, and the same are accordingly filed.

Thereupon this cause came on this the 14th day of November, 1902, to be heard upon the papers formerly read in the cause, the said answer of the said A.N.Pennington and the exceptions to the answers of the said W.H.Pennington and A.N.Pennington, and was argued by counsel.

On consideration whereof, the court is of opinion that the said exceptions are well taken, and it is therefore adjudged, ordered and decreed that the said exceptions be and they are hereby ~~overruled~~ sustained.

And thereupon, on motion of the said A.N.Pennington and W.H.Pennington, by their counsel, leave is granted them to file their amended answer, which is prayed to be taken and treated as a cross-bill against the complainants, and the same is accordingly filed. And leave is granted the said plaintiffs to except to the said amended answer, and to demur to, or answer the said cross-bill hereafter at rules, or at ~~the~~ the next term, if so advised.

And it further appearing to the court that the said C.D. Russell, John Coffman and Barbara J.Pennington

have each been served with process in this cause as required by law,
and have each failed to appear to plead, answer or demur the the
said bill, it is ordered that the same be taken for confessed as to
them, and the cause is continued.

J. M. & E. F. Carter
v { Lee Chy

W. H. Pennington et al

Decease No 2.

Entered Co. B, No 7. P.

203-

Enter this decree
Nov 14, 1902

H. C. W. Shure

John M. & E. F. Carter,

Plaintiffs

vs.

W. H. Pennington,

Defendant.

On motion of the defendant, by counsel, leave is granted to him to file his answer in this cause, which is accordingly done; and the plaintiff replied generally to said answer.

Whereupon, this cause, coming on ___ day of July, 1902, to be heard upon the bill of the plaintiffs, and exhibits filed therewith, and said answer of the defendant and general replication thereto, was argued by counsel. On consideration whereof, it is adjudged, ordered and decreed that the said complainants amend their bill, making A.N. Pennington, C.D. Russell, John Coffman and Barbary J. Pennington parties thereto, if so advised, and the cause remanded to rules to allow the said amended bill to be

filed and matured. On motion of counsel E. L. Noel ~~and~~ is permitted to file her petition in this cause as assignee of J. M. Carter and leave is granted the said E. L. Noel to prosecute said suit in the name and stead of the plaintiff John M. Carter.

John M. & E. F.
Carters.
vs. { Du Chy.
W. H. Pennington.

Decree remanding
cause to rules re.

C.B. No 7. (P. 13)

Enter this decree
July, 16th, 1902
- 4 -

John M. & E. F. Carters,

vs.

W. H. Pennington,

On motion of the defendant by counsel, leave is granted

Defendant.

Plaintiff.

Filed and entered.

Cause remanded to rules to allow the said amended bill to be

Carter v. Pennington.

233.

R.T. IRVINE

A.K. MORISON

IRVINE & MORISON

ATTORNEYS AT LAW

BIG STONE GAP, VA.

December 4, 1908.

Hon. J. C. Noel,

Pennington Gap, Virginia.

Dear Sir:

We enclose you copy of the depositions taken in the above
suit at Pennington Gap on November 27, 1908.

Yours very truly,

Irvine & Morison.

jem.

The depositions of John M. Carter and others taken pursuant to notice hereto attached, by agreement of counsel, -- the place of said deposition being changed from the law office of E. W. Pennington to the law office of J. C. Noel -- on the 27th day of November, 1908, before Charles C. Bales, a notary public for Lee County, Virginia, to be read as evidence in behalf of the defendants in a certain suit in chancery, now pending in the Circuit Court of Lee County, Virginia, wherein John M. Carter and others are complainants and A. N. Pennington and others are defendants.

P R E S E N T - J. C. Noel, counsel for complainants;
A. K. Morison, counsel for defendants.

J. A. Cauffman, a witness of lawful age, being first duly sworn, deposes and says:

Direct Examination -

By Mr. Morison-

Q - Mr. Cauffman, what is your age, your occupation and where do you live?

A - Occupation, farming; I live in the Pocket Country, up here in Lee County, Virginia. My age is 38 yrs., or something near.

Q - Did you purchase a piece of land once owned by C. D. Russell, in the Pocket Country, and do you now own the land?

A - Yes, sir.

Q - What is the acreage of the land in question?

A - The deed calls for 5 acres, I believe, more or less.

Q - Is it a part of what is known as the "Planing Mill" tract?

A - Yes, sir.

Q - Did you purchase all of the land Russell owned in the Planing Mill tract?

A - Yes, sir.

Q - What was the condition of the land at the time you bought it, as to the improvements and the like?

Objection by Mr. Noel -

The foregoing question and any answer thereto are objected to; also the whole of the foregoing deposition is objected to, because under Section 2413 of the Code of Virginia no voluntary partition of land can be made except by deed; defendants having failed to show that said partition was by deed. The question of improvements is immaterial and irrelevant.

A - There was no improvements on it when I came in possession of it only the house I live in and a small crib. There were two more houses on the piece of land but they were moved away before I came in possession of it.

Q - Do you know who moved the houses away and what kind of houses they were?

A - They were box houses; very good little houses. They were sold to Luther Slomp and he moved them away.

QA- Do you know who sold the houses to Slomp?

A - I think Charlie Russell.

Q - Is this the same C. D. Russell of whom you purchased?

A - Yes, sir.

Q - Where is this tract of land located with reference to the Pennington Gap, that you now own?

A - Well, it is rather North from here, I guess; on the North Fork of Powell's River.

Q - Does the public highway pass along or through it?

A - It passes by; yes, sir.

Q - The entire length of the tract of land; that is, of the tract you own?

A - The entire width of the land.

Q - How far is the land from Pennington Gap?

A - Two miles, I guess.

Q - Is the highway in question one that is often traveled?

A - Yes, sir.

Q - Is it one of the main public highways of the county or not?

A - Yes, sir.

Q - Did you ever hear J. M. Carter make any statement regarding his deed from R. L. Pennington, Special Commissioner; if so, state what this statement was?

A - Objection by Mr. Noel -

Objected to because immaterial and irrelevant.

A - I did one time. He told me that he got Bob Pennington to make him a deed for his half interest of the Planing Mill property and he put it to record, and that he gave Pennington \$5.00 for making the deed.

Q - Is that all the statement he made?

A - I believe so, he wanted to sell me the remainder of it, and I told him I was not able to buy it. He wanted to sell me the remainder, if he got it, and I told him I was not able to buy it.

Q - He said if he was successful in this suit he wanted to sell you the remainder of the land?

A - Yes, sir.

Q - Who was at that time in possession of the remainder of the Planing Mill tract of land?

A - Mr. Pennington was controlling the land at that time. I rented a part of it adjoining me.

Objection by Mr. Noel -

The foregoing question and answer thereto are objected to

because immaterial and irrelevant, and also not the best evidence as to who is the owner of said land.

(Mr. Noel) The whole of the foregoing deposition is objected to because irrelevant and immaterial, but not waiving said objection but insisting thereon, witness is cross-examined, as follows:

Cross Examination -

By Mr. Noel -

Q - What was the value of the two little houses that you say were sold to Luther Slomp and removed from that portion of the tract of land that you now claim to own?

A - I would not hardly know. One was a right good little house and the other was not worth quite so much. I could not state now just what it would be worth.

Q - Do you know what Mr. Slomp paid for them?

A - No, sir; I do not know. I was living there when he tore them down, but I do not know what he paid for them.

Q - What, in your judgment, were they worth?

A - Well, I could not say. I am a poor judge in lumber business that way.

Q - How much did you pay C. D. Russell for the 5 acres that you now own and the house in which you live?

A - I paid him \$160.00.

Q - Were either of the houses removed as good as the one in which you live?

A - One was a better house than the one I live in.

Q - You paid \$160.00 for the 5 acres and the house in which you live?

A - Yes, sir.

Q - And further this deponent sayeth not.

Also the deposition of Mary B. Carter, a witness of lawful age, being first duly sworn, deposes and says:

Direct Examination

By Mr. Morison -

Q - Mrs. Carter, are you the wife of J. M. Carter, one of the complainant's in this suit?

A - Yes, sir.

Q - Do you know anything of the joint purchase of the Planing Mill 30 acre tract of land by your husband and W. H. Pennington?

A - Henry's father came and asked for money to buy the land at the Court House, and we were to have one-half and Henry the other half and we gave him the money to buy it with \$150.00; but Henry, himself, I do not know that I ever heard him mention it. Then, sometime along, maybe twelve months, maybe not over six months, I was down at Jonesville at Camp Meeting and he said he had a deed made there for one-half interest in that land and John said what does the deed cost to lift it, and John went in and paid him \$5.00 and brought it out and we took it home.

Q - What was the total price paid for the 30 acres?

A - I could not tell you that. If I have heard, I have forgotten.

Q - Do you know anything of the division made by your husband and W. H. Pennington to the land in question?

A - Well, nothing more than what I heard him talk about before he went to the court house and bought it ----- That was J. D. Pennington and my husband ----.

Q - Where was the division line run between your husband's land and Pennington's land?

A - Something near a cross fence, he said. I think it was on the side next to where we live from the Dry House?

Q - How much of the eastern end of the place would this division give to your husband?

A - I could not tell. The way he took it, it would be half of it; about where he thought one-half would run.

Q - After this division was made, did your husband ever rent and cultivate any land west of the line of Mr. Pennington?

A - I do not actually remember about it. We cultivated some land the first year and then after that we rented some of J. D. Pennington, and it seems that we attended some of the land the second year, but I do not know how much. I was sick nearly 12 months while we lived there and I did not pay much attention to anything that went on, and it has been some time and I do not remember.

Q - Was the land your husband rented the second year near the division line between your husband's land and Pennington's land, or not?

A - Objection by Mr. Noel -

The foregoing question and any answer thereto is objected to because the witness has not stated that her husband rented any of the land in controversy the second year, having merely stated that he attended some of it.

A - I could not say whether he rented any the second year we lived there or not, because I have forgotten; perhaps I knowed at the time; then I was sick part of the second year that we lived there; we attended some land but I do not know whether he attended or rented or not.

Q - Was there a division fence built on this division line?

A - Yes, sir; this that he pointed out where the line should run. I saw them standing out in the road pointing and talking and he said to me, I would love for you people to stay here; I want you to have part of the land, and he says if you will give me \$150.00 I will have the land sold and bid in for you and Henry, - that was his boy -. We gave brother Jim the money and he said he went on and bought the land. Of course, we got a deed from the court for one-half interest in 35 acres.

Q - Was there a division fence between your husband's land and Pennington's land?

A - There is a fence there and he pointed out and said that that line would be about one-half of the land.

Q - Was the fence built on the line?

A - The way he talked, it was.

Q - The fence was built on the line?

A - Yes, sir. That is the way I understood it. The way I understood it, we were to have the East end.

Q - Can this fence be seen from the Public Road?

A - Well, it is not there now.

Q - What kind of fence was it?

A - Plain fence.

Q - How high?

A - I could not state that. It has been so long ago.

Q - What is your best recollection as to when this fence was removed?

A - I could not tell that. It has been moved sometime since we lived there. Who moved it and when it was moved, I could not state that; I do not think it is there yet.

Q - Was it known or not, Mrs. Carter, in your vicinity who was in possession of the land East of the fence, and who was in possession of the land West of the fence, after you and your husband moved on the land.

A - Well, the way I supposed it was, the way I thought it, Brother Jim Pennington was, but it was going to be sold.

Q - After the division fence was put up and after you and your husband moved on the eastern end of the land, was it generally known in that vicinity who was in possession of that part of it which lay East of the fence and that part which lay West of the fence?

A - Objection by Mr. Noel -

The foregoing question and any answer thereto is objected to because the witness has not stated that the division fence was

made after the joint purchase; and, further, as the witness has already stated that she and her husband were living on the Eastern end of the land at the time the joint purchase was made.

A - I suppose it was.

Q - Who was in possession of the Eastern end of the place and who was in possession of the other end?

A - We were in possession of the upper end of the place next to Mrs. Garrett's land, and the Penningtons, I suppose, was in possession of the other end. I saw they went ahead and tended it, or rented it.

Q - How long did you and your husband live on the land, Mrs. Carter?

A - Sometime near two years before we bought and afterwards altogether. We moved there some time after we bought, but I do not remember just how long. The first year we moved there we rented of Mr. Pennington and during that year we bought that end of it.

A - When you and your husband conveyed to C. D. Russell, was it or not your understanding that you were selling all of your land there?

A - I do not know about that; I could not tell.

Q - After you made title bond or deed to Russell, did you understand that you still owned more land in the Planing Mill tract?

A - Yes, sir; the way I understood, we had a deed then calling for 35 acres, and we deeded Mr. Russell so much of it.

Q - Does not your title bond to Mr. Russell purport to convey all of your interest in the Planing Mill tract?

Objection by Mr. Noel-

The foregoing question and any answer is objected to because the title bond is the best evidence.

A - I ^{do} not remember it that way.

CROSS EXAMINATION

By Mr. Noel -

Q - As I understand you, Mrs. Carter, you understood from the conversation between J. D. Pennington and your husband at the time your husband furnished money to buy the one-half interest in that piece of land that your husband was to have one-half of the tract and not the little strip that your husband afterward sold to C. D. Russell?

A - That is the way I understood it.
that

Q - This fence was pointed out by Mr. Pennington as would probably be a division line was not the fence that bounded the piece of land sold to C. D. Russell by your husband?

A - It did as far down as it reached; I mean, the width of the land, but if it run up on the hill, I did not understand it that way. Perhaps the way he talked that fence would go as far down as ours would reach when it was divided.

Q - Then your understanding was that your husband was to have the eastern half of the tract of land and W. H. Pennington was to have the western half?

A - Yes, sir.

Q - Did this fence that you speak about run entirely across the tract of land; that is, from the road clear across to the upper side of the land?

A - No, sir; I do not think it did. I think it just run a certain distance and then turned around. The way I remember it, it just run so far and then went back towards the Garret line. That is the way I remember it.

Q - As you understood it, your part of the land was not to stop at the end of that fence, but was to go on through the tract of land?

A - Yes, sir.

Objection by Mr. Morison -

The foregoing question and the three preceding questions are objected to because the questions are in themselves answers. and

therefore improper.

Re-direct Examination

By Mr. Morison -

Q - Mrs. Carter, what did your husband get for the land he sold C. D. Russell, as to the best of your recollection?

A - I do not exactly remember, but I think it was somewhere from \$80.00 to \$100.00; I do not exactly remember.

Q - Did he sell him the two houses off of the land?

A - No, sir; only what he sold Mr. Russell -- he sold him a piece of land and sold him the houses with the land.

And further this deponent sayeth not.

Signature waived.

Also the deposition of J. M. Carter, who being first duly sworn, deposes and says:

Direct Examination by

Mr. Morison-

Q - Mr. Carter, what is your age, occupation and where do you live?

A - Age 44 yrs., farming in the Pocket Country, Lee County.

Q - Are you one of the complainants in this suit?

A - Yes, sir.

Q - When you lived on the Planing Mill tract of land, how much of it did you have in your possession, and how much of it did Mr. Pennington have in his possession?

A - Well, sir; my mind is kind of tangled on that. At the time I bought this land I had it all in possession; but I am not positive of that.

Q - Of whom did you rent?

A - J. D. Pennington.

Q- Did you rent land near the division fence of Mr. Pennington

A - Yes, sir; on both sides.

Q - You rented land on the east of the fence and on the west of it, of Mr. Pennington?

A - Yes, sir; that is my recollection.

Q - What is your best idea as to the number of acres that lay east of the land you rented of Mr. Pennington?

A - I do not know.

Q - Give me your best idea on that?

A - If I am right about it, I rented both the east and west end of it -- the way I remember -- the first year I went there I had the tract of land all rented -- I am not positive about it.

Q - How much of the land did you live on and that you cultivated that you did not rent of Mr. Pennington?

A - I am not positive whether I paid rent on the eastern end of the place or not, but my recollection is that I did not.

Q - How much of it was there that you did not pay rent on?

A - The best I can guess, it was something like three acres that I did not pay rent on.

Q - Where does this land lay with reference to Pennington Gap?

A - Something near two miles.

Q - When you came to Mr. Noel in this matter, did you or not tell him what you claimed and what Mr. Pennington claimed of the land in question?

A - Yes, sir; I think I did.

Q - How much timber was there on the land when you first purchased it?

A - I do not remember how much there was on it. What I would call on the west side, of it, there was a strip of timber which run in the mountain around the ridge.

Q - What was the acreage of the timber land of the tract?

A - I do not think there was over ten acres.

Q - Who cut this timber?

A - I helped to cut a part of it.

Q - What did you get for the part you cut?

A - Nothing.

Q - What did you do with it?

A - Mr. Pennington cut it up.

Q - To whom did you sell your part of this land?

A - I sold to C. D. Russell a certain portion of land lying near the public highway. About the way I deeded to him, my recollection is three acres, more or less.

Q - To whom did you sell the remainder?

A - Have not sold any.

Q - What did you get for the land you sold Mr. Russell?

A - Well, sir; I got a piece of mountain land; I do not remember what the piece of land was valued at at the time.

Q - What was the acreage of the mountain land?

A - I do not remember that.

Q - Was it as much as 25 acres?

A - I had the land surveyed out but I do not remember the acreage.

Q - Did you not make a deed to E. F. Carter for this land?

A - Yes, sir; it seems that I did.

Q - How much did you convey to him?

A - One-half interest.

Q - Did you make a conveyance to Mrs. E. L. Noel for some of this land?

A - I think I made a conveyance to J. C. Noel, is my understanding; it was drawn to E. L. Noel.

Q - What was the trade between Mr. J. C. Noel, with whom I understand you made this transaction, at the time you executed the deed to Mrs. E. L. Noel?

Objection by Mr. Noel

The foregoing question and any answer thereto is objected to because the deed is the best evidence and shows the consideration.

A- Well, sir; the way I remember it, I gave him my deed and told him the circumstances of this land, and I deeded him a one-fourth interest in it to look after it; that is the way I understood it.

Q - Was he to have one-fourth interest in all that you claimed, or one-fourth interest in what he recovered?

A - One-fourth interest in what I claimed of the land unsold.

Q - Cross Examination by
Mr. Noel -

Q - Mr. Carter, state as nearly as you can, the trade you made for that land with W. H. Pennington, or J. D. Pennington, his agent?

A- I never had any trade with Mr. W. H. Pennington, is my remembrance. The trade I had with J. D. Pennington; he came to me and said to me, he said "John, I am about to lose my home, you have a little money and I know it." And he further went on and made a proposal with me for to give me one-half interest in the Planing Mill property if I would give him \$150.00 to pay one-half of the debt which was against him - a deed of trust belonging to a company, I do not remember at this time the name of it, think a machine company -. I gave him the money and he went on to court and paid off the cost and commissioner with my money and brings me back receipts showing that he had paid it, and R. L. Pennington was to deed me one-half interest in it, which he did.

Q - State whether or not any division line was made between you and W. H. Pennington, or J. D. Pennington, his agent?

A- There was not.

Q - Was there any understanding between you and Mr. Pennington as to which one-half of the land you were to have and which half he was to have?

A - Yes, sir; I was to have one-half interest on the eastern

end of the place.

Q - You spoke in your deposition in chief about having rented the cleared land in controversy; state whether or not this renting was before or after the joint purchase?

A - I am not positive about that.

Q - Had you rented it when you moved there.

A - Yes, sir.

Q - Were you living there at the time you made the joint purchase?

A - Yes, sir. I had it rented, and it has been so long that I do not remember how that was.

Q - Did you and W. H. Pennington or J. D. Pennington ever make a division of that piece of land?

A - No, sir.

Q - When you came to me, J. C. Noel, to take charge of and bring suit to recover or partition this land; did you not expressly state that the only contract between you and Pennington was that you were to have the eastern one-half of the land and him the western?

A - Yes, sir.

Q - Objection by Mr. Morison

The foregoing question and answer are objected to because the witness has hereinbefore answered this question, and is therefore immaterial.

Q - Did you ever explain to me at the time you employed me to institute suit for you that J. D. Pennington or W. H. Pennington had divided the land?

A - No, sir.

Objection by Mr. Morison -

The foregoing question and answer are excepted to, because the witness has answered this question on direct examination, and it is therefore immaterial, and further, because the question calls for a self-serving answer of the witness.

Q - State whether or not, in your examination in chief, when you were asked the question - "If you explained to me the claims of Pennington?" that you understood that question to embrace the claims that Pennington now sets up in the defence of this case? (Question re-put)

When you were asked in your examination in chief the question - "When you came to Mr. Noel in this matter, did you or not tell him what you claimed and what Mr. Pennington claimed of the land in question" - Did you understand that question to embrace the defence that the Penningtons are now making in this suit?

A - Yes, sir; if I understand the question, I think it was.

Q - Did you explain to me that Penningtons were claiming; that you and they made a division of the land and that you were to only have the amount that you sold Charlie Russell?

A - No, sir; I did not.

Objection by Mr. Morison -

The foregoing question and answer thereto are excepted to because the same identical question has been twice asked and answered by the witness and because it calls for self-serving answer of the witness.

Q - State whether or not you ever heard or not what defence the Penningtons would make in this suit until after the suit was instituted?

A - No, sir; I did not.

Q - Objection by Mr. Morison, for same reasons as in last objection.

Q - At the time you sold C. D. Russell a portion of this mill tract of land, what was that tract of land, taking in the whole tract, reasonably worth per acre?

A - If I would have been buying it by the acre, I would not have wanted to give over \$10.00 for it at the time it was sold.

Q - At the time you sold to C. D. Russell; not at the time you bought it?

A - I do not know what it was worth; the whole tract of it, or what land was worth at that time.

Q - How much were the two little houses reasonably worth that were removed off of the tract of land?

A - It would only be a guess at it. I would value the houses at somewhere about \$30.00. I helped to manufacture the lumber that went into the houses.

Q - You think \$30.00 would have been a fair price for the two little houses?

A - It seems to me that it would be; they were very small, and the best I remember about it, Mr. C. D. Russell told me he got \$30.00 or \$35.00.

Re-direct Examination by

Mr. Morison -

Q - Mr. Carter, when you first came to Mr. Noel what did you explain to him about the suit; that is, your claim and Pennington's claim as to the land in controversy?

A - Well, sir; the way I remember, as I told him about it; I told him I was a poor man and I told him Mr. Pennington had gone away; and I made him this offer, and he agreed to take one-fourth interest in the land, and I deeded it to him.

Q - Did you tell him at that time that you claimed of the land and what Pennington claimed?

A - Yes, sir; I told him I claimed one-half interest, and I think I showed him my deed.

Re-cross examination by

Mr. Noel -

Q - What did you tell me that Pennington claimed?

A - Well, sir; if I ever claimed anything but one-half interest, it is more than I ever knew anything about.

Re-re-direct examination by

Mr. Morison -

Q - At this time, did Mr. Pennington have more than one-half
his
of the land in possession?

A - Yes, sir.

Q - How much more?

A - Something like, about three or four acres; part of
it uncultivated.

Q - And was claiming it?

A - Yes, sir.

Q - And further this deponent sayeth not.

Signature waived.

By Agreement of J. C. Noel, counsel for complainants, and
A. K. Morison, counsel for defendants, it is agreed that the
foregoing depositions of J. M. Carter and others may be taken by
J. G. Nesbit, stenographer, and by him transcribed, and the
transcript is to be regarded for all purposes as if written out
at length at this time.

I, Charles C. Bales, a notary public, for the county of
Lee, in the state of Virginia, do hereby certify that the
foregoing depositions of John M. Carter, J. A. Cauffman,
Mrs. Mary E. Carter and J. M. Carter were sworn to and taken
before me in my county and state aforesaid, at the time and
place and for the purposes mentioned in the caption.

Given under my hand this the ____ day of November, 1908.

Notary public for Lee County, Va.

17-

Big Stone Gap, Virginia, Nov. 27-08.

J. G. Nesbit, stenographer, fee for taking and transcribing
above depositions, 8 hours ----- \$4.50

Charles C. Bales, Notary Public, fee -----

By agreement of counsel the deposition of J. C. Noel is here taken, to be read in behalf of the complainants, without formal caption, and who having been duly sworn, deposes as follows:

Q - State the conversation that occurred between yourself and J. M. Carter at the time you were employed as counsel by him to institute this suit?

A - Mr. Carter came to me and said: " I bought a one-half interest in what is known as the "Planing Mill" tract of land, supposed to contain about 36 acres of land," and exhibited to me a deed from Commissioner, R. L. Pennington, for a one-half interest in said tract of land, and says, further, "I have no money with which to pay a counsel, I am a poor man; Mr. Pennington has moved away to Kentucky and I want the land divided; there is some little previous transaction between yourself and me and if you will square them and take the case for one-fourth interest in that part of the land which I have not already conveyed to C. D. Russell, I will employ you to bring this suit." We agreed upon those terms when I took, as I remember, the contract from Mr. Carter, and shortly afterwards had him to execute a deed for the one-fourth interest. Mr. Carter did not explain to me that Mr. Pennington claimed any more than one-half interest in the land, or I never heard that he claimed any more than one-half interest in the land until after the institution of this suit.

And further this deponent sayeth not.

Signature waived.

By agreement of J. C. Noel, counsel for complainants, and A. K. Morison, counsel for defendants, it is agreed that the foregoing depositions may be taken by J. G. Nesbit, stenographer, and by him transcribed, and the transcript^{is} to be
1-

regarded for all purposes as if written out at length at this time.

I, Charles C. Bales, a notary public, for the county of Lee, in the state of Virginia, do hereby certify that the foregoing Deposition of J. C. Noel was sworn to and taken before me in my county and state aforesaid, at the time and place and for the purposes mentioned in the caption.

Given under my hand this the _____ day of November, 1908.

Notary Public for Lee County, Va.

JNO.M.CARTER,ET AL.

vs.

W.H.PENNINGTON ET AL.

The Deposition of J.C.Noel,taken before me _____
_____ a _____ for Lee County,
state of Virginia,on the 13th day of Sept.1905,at the office
of J.C.Noel,in Pennington Gap,Virginia,taken by agreement of
counsel,to be read as evidence in behalf of the plaintiffs
E.L.Noel,in a certain suit in equity pending in the Circuit
Court for Lee County,entitled Jno.M.Carter et al vs W.H
Pennington.

Present.) J.C.Noel,for Plff's.
) L.T.Hyatt,for Deft.

J.C.Noel,a witness of Lawful age being duly sworn deposes and
says:

Ques. (1)-- State your age,residence,and occupation?

Ans.--46 years old reside at Pennington Gap,Va.and am
a lawyer.

Ques.(2)--What relation are you to E.L.Noel,one of the plain-
tiffs in this suit?

Ans.I am her husband.

Ques.(#)--State if you know,who acted as agent for your vi-
wife in the purchase of a part of the land in contro-
versy?

Ans.I did.

Question.(4)--State whether or not at the time of said
purchase your or your wife had any knowlede of
any parole agreement between Jno.M.Carter and
W.H.Pennington or between JNo.M.Carter and J.D.
Pennington?for the Partition of said land.

Ans.I did not,and my wife knew nothing of the land until
after the trade had been made and deed signed and
delivered.

X Examination.

Ques.(1)--Do you recollect of having written a contract or title bond from J.M.Carter to C.D.Russell wherein said Carter agreed to convey to said Russell about three acres of of said land, and at the same time an other title bond whereby said Russell agreed to convey to said Carter in exchange therefor a tract of land lying on Pucket's creek, being a part of the Mallett land?

Ans.I remember having drawn several contracts between said parties, but do not remember the contents of any of said papers. I may have written such bonds but have no independent recollection of having done so.

Ques.(2)--What was the real consideration of the deed from Jno. M. Carter to E.L.Noel, filed in this case.

Ans.\$50.00. Part cash, part for various attorney fees, and one \$25.00 for attorney fee in this case.

And further this deponent sayeth not.

J. E. Noel.

Agreed that this deposition may be read without being sworn to.

L. P. Hyatt
J. E. Noel.

Jno. M. Carter, Puff.
25 in Chancery

W. A. Pennington

Deposition
of J. C. Noel.

The deposition of J. D. Pennington, taken before me, W. K. Hopkins, a commissioner in chancery for the Circuit Court of Lee County, on Monday, the 14th day of May, 1906, between the hours of 8 o'clock A.M. and 6 o'clock P.M., at the office of W. K. Hopkins, in the town of Pennington Gap, Virginia, pursuant to notice hereto annexed, to be read as evidence in behalf of the defendants in a certain suit in chancery pending in the Circuit Court of Lee County, Virginia, between J. M. Carter & others plaintiffs, and W. H. Pennington & others defendants.

The witness, J. D. Pennington, being first duly sworn, deposes and says:

Q. 1. by L. P. Hyatt, atty for defts. A. H. Pennington. - Please state your age, residence and occupation?

Ans. - My name is J. D. Pennington, I reside at Baxter Kentucky and am 52 years of age.

Ques. 2. for same: - Did you formerly live in Lee County, Va.; and if so, where and when?

Ans - Yes, I lived in Lee County Virginia, for two years, at the Turner place about one and a half miles north of Pennington Gap, and for the four or five years preceding; at or near the mouth of Shultz creek, in the Pocket. I moved from the Turner place to Kentucky seven

years ago this spring.

Ques. 3 for same. - Are you acquainted with a tract of land situated in the Pocket, on the North fork & Bob's Branch near the mouth of Straight Creek, known as the 30-acre mill tract?

Ans - I am, I owned this tract of land up to the time it was sold by order of court, by R. L. Pennington commissioner.

Ques. 4. for same. -- When sold by said Commissioner Pennington, who purchased it?

Ans. - W. H. Pennington and John M. Carter.

Ques. 5 for same. - Please state anything you may know about a partition by said W. H. Pennington and John M. Carter of said tract of land after their purchase?

Ans - I helped to make the division of the land between the parties, they began at a cossopine tree near the bank of the North Fork River between the planing mill and the mouth of Bob's Branch, thence they run northwarily to a Locust bush on a rock in the field about 150 yds, thence the same course something near 100 yds to the coal road, thence North-eastwardly with said coal road to Bob's branch, thence southwardly down Bob's branch with Robt. Kanitt's line to the mouth of said

branch in North Fork, thence down North Fork to the beginning, this piece of the land lies on the South east corner and the part given to John M. Carter.

Ques. 6 for same. - Please state, if you know, whether or if you are acquainted with E. F. Carter? And if so, where did he live about the time this partition was made and what relation is he to said John M. Carter?

Ans - I am well acquainted with E. F. Carter, at the time this partition was made, he lived in the Pocket on Puskets creek about a mile from this tract of land and he is a brother of John M. Carter.

Ques 7 for same. - Please state, if you know, whether said E. F. Carter knew of the partition as made by said John M. Carter & W. H. Remington as above stated by you?

Ans - Yes, he knew about the partition, he was working for me at the time and I showed it to him. I had a plaining mill located there on this 30 acre tract, he was running the mill for me, John M. had sold his land & his land and was buying this and E. F. Carter thought he was making a bad trade and was talking to me about it, I then pointed out the lines to him as above stated and explained to him

what John was getting and he then
seemed to think John was making a
very good trade.

Ques. 7 for same. - At the time this
partition was made, was it an equal
and fair one, in the condition the prop-
erty then stood?

Ans. - Yes, we thought it was
a fair divide at that time, there was
three dwelling houses on the part John
M. Carter got which was paying a good
rent, two of them, \$20. per year and
the other one \$12., there was only one
house on the W.H. Pennington share, at
that time the land was not considered worth
but very little, from one to two dollars
per acre out side of the houses.

Ques. 8. for same. - Please state what
changes have since been made in the
two pieces of property as divided?

Ans. - Two of the houses situated on
the John M. Carter part have been moved
away and a barn built on same, a
Railroad has been built through both
pieces, On the W.H. Pennington piece the
mill shed and barn have been moved
away, this is about all the changes, I think,
worth mentioning.

Ques. 9. for same. - Is it not a fact
also that J. L. Pennington, after said parti-
tion, leased the W.H. Pennington share
& opened up a coal mine on same &

that still later A. N. Pennington & his son opened up the same seam on the opposite side of Lone Mt. and that said openings have now proven the property to be very valuable for coal?
 Ans. = Yes, that is a fact.

Ques. 10. for same. - I now hand you a title bond dated Feb'y 18, 1899 from S. C. Russell, ^{& others} to J. M. Carter & ask you to file same with your deposition?

Ans. - I file same as requested.

Ques. 11. for same. - After said partition did each of said parties take possession of their respective parts & claim them and no more?

Ans. - They did, and afterward, son Pennington rented a piece of his share north-west of the coal road to John to tend in corn.

And further this deponent saith not.
 J. D. Pennington

witness claim
 1 day - \$1.00
 mileage 216
 paid by
 J. D. Pennington

I hereby certify that the foregoing deposition of J. D. Pennington was taken, subscribed and sworn to before me at the time and at the place ^{for the purpose} mentioned in the caption. Witness my hand this 14th day of May, 1906.

W. H. Hopkins Commissioner
 In testimony

1 All of the ~~witness~~ ^{by complainant} deposition is
2 excepted to because of the defective
3 certificate of the officer.

4 J. B. Noel

17 J. M. Carter, et al
18 vs. Depositions
19

20 W. H. Pennington, et al.
21

22 Filed May 15, 1906 -
23

24 N. C. J. Caring
25





26 Clerk -
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Know all men by these presents that we are held and mutually firmly bound unto J. M. Carter in the just and full sum of three hundred dollars, and as to this obligation we waive the benefit of the homestead law; Witness our hands and seals this the 18 day of Feb. 1899.

The condition of the above obligation is such that, whereas the said L. D. Russell has contracted to sell and convey unto the said J. M. Carter all of a certain boundary or tract of land on the east side of Puckett Creek, supposed to contain about 100 acres, beginning at J. T. Coopers line on said Puckett Creek, thence up said Creek, to a poplar corner on line between the lands of G. W. Pennington and L. M. Ginn, thence eastwardly to the top of a ridge to some blackoaks, thence with the top of said ridge to J. T. Coopers line, thence with the said J. T. Coopers line to the beginning, upon on the following terms and conditions; to wit: the first 35 acres of said to be given in exchange for a certain tract or parcel of land which the said J. M. Carter, bought of R. L. Pennington Commissioner, it being a part of the J. D. Pennington land, and being and lying the Puckett Country, on the waters of the north fork of

Powells River, and beginning at a rock on
the North fork, thence northwardly with a plank fence
to a coal road, thence with the coal road
to Bob Garretts line, near Bob's Branch and with
said Garretts line to the North fork to a stream,
thence with the said North fork to the begin-
ning; and the residue of said land at the price
of \$20.00 per acre, twenty dollars off of said sum
is paid in hand in the form of a certain
safe or writing desk, the balance of said purchase
price to be paid by said J. M. Carter in three
equal payments on one, two, and three years
time, Now if the said C. D. Russell shall, when
the entire purchase price of said land shall
be paid as above specified, execute unto the said
John M. Carter, his heirs or assigns, a good and
sufficient deed to said land, then this
obligation to be void, otherwise to remain
in full force. Witness our hands and
seals day and date first above written.



C. D. Russell 
David Pennington 
J. R. Stapleton 
E. S. Evans 

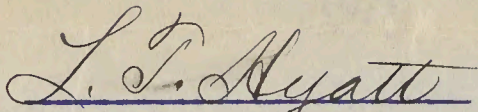
To E. F. Carter, E. L. Neel and J. M. Carter:

You and each of you will please take notice that on Monday, the 14th day of May, 1906, at the office of W. K. Hopkins, in the town of Pennington Gap, Virginia, between the hours of 8 o'clock A.M. and 6 o'clock P.M. I will proceed to take the depositions of J. D. Pennington and others, which depositions, when taken, are intended to be read as evidence in behalf of the defendants in a certain suit in chancery now pending in the circuit court for Lee county, Virginia, between J. M. Carter and others, plaintiffs, and W. H. Pennington and others defendants; and if from any cause the said depositions be not begun on that day, or, if begun, be not completed, the same will be adjourned from time to time and from place to place until completed.

Very respectfully yours,

A. N. Pennington,

By Counsel.



Atty. for defendants.

W. H. Pennington et al
ads. { Lu Chy
J. M. Carter et al.

Notice to take dep-
ositions.

Copies enclosed for
E. L. Noel
J. M. Carter (Lying John)
E. F. Carter.

Executed May
2 1906 By
Deputy Sheriff
ice to E. L. Noel
J. M. Carter
E. H. Carter
E. S. Stapleton & S
for M. M. Ball
S. L.

Atty. for defendants.

A. H. Pennington.

town of Pennington Gap, Virginia, between the hours of 8 o'clock
the 14th day of May, 1906, at the office of W. K. Hopkins, in the
You and each of you will please take notice that on Monday,
to E. F. Carter, E. L. Noel and J. M. Carter:

JNO. M. CARTER ET AL

v.

W. H. PENNINGTON ET AL.

The Depositions of JNO. L. PENNINGTON et al taken before me, Pearl Summers, a Notary Public for County of Lee, State of Virginia, on the 14th day of September, 1904, at the office of J. C. Noel in the town of Pennington Gap, Lee County, Virginia, pursuant to an agreement of the parties by their counsel, to be read as evidence on behalf of the defendant, A. N. Pennington, in a certain suit in chancery pending in the Circuit Court for Lee County, Virginia, entitled Jno. M. Carter et al v. W. H. Pennington et al.

PRESENT: L. T. Hyatt, Counsel for Defendants.
J. C. Noel, Counsel for Plaintiffs.

J. L. PENNINGTON, after being duly sworn, deposes and says:

Examination by L. T. Hyatt:

Q. 1. State your age, residence and occupation.

A. 45; Lee County, Va., near Pennington Gap; work on a farm most of the time.

2. Are you acquainted with a tract of land known as the "J. D. Pennington 30 Acre Mill Tract"?

A. I am acquainted with that tract of land.

Q. 3. Did you ever have a conversation with Jno. M. Carter with respect to the purchase by him and W. H. Pennington of the said tract of land and the partition of the same between them; and if so, state as nearly as you can, the time and place of the said conversation and what the said Carter said with respect thereto.

A. Well, as to the time I can't tell that, but it was some time after he bought the land. He was living on the land at the time and his wife was sick when I passed there and he stepped down below the house a little bit and showed me the line where they divided the land and I asked him why he didn't take more of the land while it was so cheap and he said with an oath that he had got all of it that he wanted.

Q. 4. Please tell how the line ran as he showed it to you.

A. I don't know whether I could tell it so you could understand it or not. He showed me a line below his house where he lived. There were two other houses on the land and the line included three houses and it seemed to me the line started from a sassafras and run a straight line something near a coal road--not quite to the road--I think a corner or something below the road, kinder with the road, but below it--parallel with the road to what they call Bob Branch, and then down the branch--pretty well down the branch to

North Fork and down the Fork to the beginning.

Q. 5. You state that at the time of this conversation there were three houses on the land on which Carter lived; state whether or not those houses are there now and, if not, what has become of them.

A. Well, there is one of them there, or there was a few days ago, the last time I was up there. And Charley Russell afterwards bought the piece of land of Mr. Carter and sold two of them to Mr. M. L. Slemp, or Mr. Slemp said he got them.

(The foregoing answer, so far as it refers to the removal of the houses by M. L. Slemp, objected to because hearsay.--J. C. N.)

Q. 6. Is the residue of the said Thirty Acre Mill Tract, aside from the piece claimed by Carter, in the same condition it was at the time of the purchase by Pennington and Carter, and if not, in what respect does it differ? What improvements have been made thereon and what buildings, if any, have been removed therefrom?

(The foregoing question and any answer thereto is objected to because immaterial and irrelevant.--J. C. N.)

A. I don't know that I can tell what all has been done to it. A big old saw-mill has been tore down and they built a kind of a shop out of part of it and maybe made some fencing out of part and, I guess, a lot of stove wood out of the rest. And there was a kind of dry-house there, but I don't remember whether it was tore down or got burnt. There has been a right smart little other buildings attached down there to the other houses that wasn't there.

Q. 7. Is it not a fact, also, that one or more coal openings have been made on said residue and means provided for taking coal therefrom by way of roads, etc?

(The foregoing question is objected to for the same reasons stated above and for the further reason that the question is directly leading and suggestive.

J. C. N

A. Well, there has been two openings made--as to the road, it was already there, that is the wagon road. There is a coal chute and platform there that wasn't there.

Q. 8. How about the soil on the two parcels, has it been changed in either case for the better or worse?

A. I couldn't tell you about that; I don't suppose there has been much change in it.

Cross-examination by J. C. Noel.

Q. 1. When was the coal chute and platform erected on the land in controversy?

A. There has been ^{two} erected and been tore away again and the one that is there now was done last summer a year ago.

Q. 2. You mean it was erected in the summer of 1903?

A. 1903 I think.

Q. 3. By whom was it erected?

A. I don't know whether William or A. N. Pennington had it done.

Q. 4. When were the improvements and additions to the houses you spoke of made?

A. This last winter--some time before spring.

Q. 5. Then there is no improvement upon the residue of that 30 Acre Tract that was erected thereon prior to the third Monday in May, 1902?

A. I don't suppose there is.

Q. 6. How much land was in the boundary claimed to you as belonging to him by J. M. Carter?

A. Why it seems to me he said 6 or 7 acres--I am not certain about it. Mr. Carter said he considered the piece he got, because it had buildings on it, would be one half interest in the land on account of the value of the houses. There was one right nice house on it, if it had been painted.

(The foregoing answer, so far as it relates to how Jno. M. Carter considered the value of portion of said land, objected to because not responsive to the question.
J. C. N.

Q. 7. There was not more than three acres in that part of the said land that Jno. M. Carter sold to C. D. Russell, is there?

A. If it is not over three acres, it is a mighty big three acres.

Q. 8. Who was present when J. M. Carter told you of the division made between him and W. H. Pennington?

A. Me and Mr. Carter was all that was there.

Q. 9. When did Jno. M. Carter say that he and W. H. Pennington had made their agreement as to how much of said land each of them was to have.

A. He didn't say.

Re-examination by L. T. Hyatt.

Q. 1. Did you not at one time have a lease of the coal on a part of said Thirty Acre Tract claimed by A. N. Pennington at the time?

A. My wife had a lease and I worked it. I think it was a verbal lease, though.

Q. 2. How long did you work the coal on said land?

A. I worked what you call two seasons--fall and winter.

Q. 3. Of what years?

A. 1902 and 1903, I reckon it was.

Q. 4. For the purpose of mining said coal, did you or your wife not erect on said land a costly shute for the purpose of running coal from the bank down to the road? If so, when?

(The foregoing question is objected to, because leading and suggesting the answer desired.--J. C. N.)

Re-cross-examination by J. C. Noel.

Q. 1. What time in 1902 did you erect said shute?

A. Well, I couldn't tell the month. It was in the summer season--it was awful hot weather--it like to burnt me up carrying lumber up that hill.

Q. 2. What was the cost of that shute?

A. About fifty dollars.

Q. 3. Is that shute now upon said land?

A. No sir, not the place I put it.

Q. 4. That shute was erected, was it not, merely as a convenience to enable you to mine the coal on your lease more successfully.

A. No, it was erected to run the coal down the hill to keep the wagons from coming up after it.

Q. 5. It was erected, then, merely as a convenience for loading the coal?

A. Well, I reckon you could consider it that way--one way.

Q. 6. During the time you had said land leased, how much coal did you mine and take from it?

A. Well, I couldn't tell you that.

Q. 7. Give your best estimate.

A. I guess somewhere from twenty to thirty thousand bushels

Q. 8. How much royalty did you pay for said coal?

A. I paid one half cent a bushel, I believe it was.

And further this witness sayeth not.

Signature waived. Witness claims 50¢.

J. L. PENNINGTON.

L. N. ZION, another witness of lawful age, after being duly sworn, deposes as follows:

Examination in chief by L. T. Hyatt:

Q. 1. State your age, residence and occupation.

A. I am going on 57 years old; farmer; I live near Pennington Gap, Lee Co., Va.

Q. 2. Are you acquainted with a tract of land known as the "J. D. Pennington Mill Tract"; supposed to contain 30 acres.

A. Yes sir.

Q. 3. Do you remember when the said land was sold as the land of J. D. Pennington and purchased by J. M. Carter and W. H. Pennington?

A. Yes sir.

Q. 4. At any time after said sale and purchase, did you have a conversation with the said Jno. M. Carter with regard to a partition of the said land between them--himself and the said W. H. Pennington? If so, tell what Mr. Carter said in regard to the same.

A. Yes sir, I was passing there one day and he showed me where he had bought; we was standing next to the river and he said that he run there up the hill towards a stump and then east to the branch and with the branch to the river; and I said, "John, why didn't you buy more of it?" and he said, "That was all I could pay for."

Q. 5. How many houses, if you know, were on the piece then claimed by Mr. Carter at that time?

A. I think there was three houses then on it.

Q. 6. How many now on the land?

A. One I think.

Q. 7. Do you know what became of the two houses that have been removed?

A. I saw Mr. Slemp tearing one down and loading it on his wagon and he said he had bought it of Mr. Carter and was moving it home.

(The foregoing answer, so far as it relates to what Mr. Slemp told him, objected to because hearsay.--J. C. Noel)

Q. 8. Do you know whether any improvements have been made on the residue of said thirty acre tract since said purchase? If so, tell what.

A. No sir, I don't know that I do. I haven't been up there none this summer.

Q. 9. Is it not a fact that Jno. L. Pennington opened and mined coal on said tract of land? If so, tell, if you know, when he opened the mine and how long he worked it and whether or not he built any shute for the purpose of running the coal down to the road.

A. Yes sir, I know he opened it and built one shute, or two shutes, I don't hardly know, but I think in the fall of 1901 he commenced it. I think he run it two winters.

Cross examination by J. C. Noel.

Q. 1. Do you know, as a matter of fact, that Jno. L. Pennington built the shute on said land in 1901?

A. I think I do; I think in the fall of 1901.

Q. 2. Were you there when he built said shute?

A. I was there time and again.

Q. 3. Is your memory better along that line than J. L. Pennington's?

A. I don't know whether it is, or not.

Q. 4. Don't you think that a man who did the work, or had it done, ought to know better when he did it than a man who had no interest in it?

A. I think he ought to know when he built it.

And further this witness sayeth not.

Signature waived. Witness claims 50¢.

L. N. ZION.

W. L. CRUCENBERRY, another witness of lawful age, after being
duly sworn, deposes as follows:

(Plaintiffs object to the taking of the testimony of the witness, W. L. Crucenberry, because when the depositions were begun to be taken in this case, plaintiffs through their counsel asked that the rule be enforced. The counsel for the defendants said that they had only two witnesses present to take, Jno. L. Pennington and L. M. Zion. Mr. Crucenberry was present at the time and upon the statement of the counsel for the defendants that the only two witnesses to be now taken were Pennington and Zion, the objection to the enforcement of the rule was withdrawn. Therefore, plaintiffs think it manifestly unfair to take said Crucenberry's testimony after the representation of the counsel for the defendants.)
J. C. Noel.

(In reply to the foregoing objection, counsel for defendants says, that when the depositions were begun, he did not know that Mr. Crucenberry knew anything at all about the case and only learned that he had any knowledge in regard to the matter, after the deposition of Jno. L. Pennington had been closed. L. T. Hyatt.)

Examination in chief by L. T. Hyatt:

Q. 1. State your age, residence and occupation.

A. Age 51; residence, near Pennington Gap; Occupation, farming.

Q. 2. Are you acquainted with the tract of land known as the J. D. Pennington Thirty Acre Mill Tract?

A. Yes sir, partially.

Q. 3. Are you acquainted with Jno. M. Carter?

A. I suppose I am.

Q. 4. Did you ever have a conversation with the said Jno. M. Carter with reference to a partition of the said 30 acre tract between him and W. H. Pennington?

A. Yes sir.

Q. 5. Tell when and where the said conversation occurred and state what Mr. Carter said.

A. I don't remember the number of years it's been--five or six years. The conversation was at his own dwelling

on said land. It was a short time after they had kinder divided the land between themselves. He showed me about where the partition was between the lands. The line run from the North Fork of Powell's River nearly north, cut through that bottom and took a portion of the hill side up to the coal road that J. D. Pennington had made to haul coal from the opening that he had made on said land, thence ruhning with the coal road some distance, rather eastward, thence, leaving the coal road, going rather south of east, to a branch known as Bob Branch, and with the said branch to the North Fork of Powell's River, thence, with the river, back to the beginning.

Q. 6. I believe you state that Mr. Carter was living on that land at the time?

A. Yes, he had not been there very long.

Q. 7. State who, if you remember, was living on the other part of the thirty acres at that time.

A. William M. Cooper, I think.

And further this witness sayeth not. Signature waived.

Witness claims 50¢.

W. L. CRUCENBERRY.

WM. M. COOPER, another witness of lawful age, being first duly sworn, deposes as follows:

Examination in chief by L. T. Hyatt:

Q. 1. State your age, residence and occupation.

A. My residence is Lee County. I don't know about my occupation; sometimes I farm a little; sometimes I tend to the mill a little; and sometims try to preach a little.

Q. 2. Are you acquainted with the land known as the "J. D. Pennington Thirty Acre Mill Tract"?

A. I reckon I am. I lived on it once. I didn't go around all the lines of course.

Q. 3. How long did you live on it, and when?

A. I lived on it over two years, but as to the time, I don't recollect.

Q. 4. Who owned it when you first moved on it?

A. When I first moved on it J. D. Pennington owned it; I rented it from him then.

Q. 5. Do you remember the time when said land was sold at the Court House?

A. I suppose it was sold while I lived there, but I don't remember the date.

Q. 6. Are you acquainted with Jno. M. Carter?

A. I reckon I am, as much so as any other man in the community.

Q. 7. After the sale of the said land, did you ever have a conversation with the said Jno. M. Carter, or hear a conversation between him and anybody else, with respect to the partition of the said land?

A. Yes sir.

Q. 8. Tell what was said.

A. As I remember I was present when there was a corner made for J. M. Carter in the division of the land, and heard them tell Jno. M. Carter and he accepted of the line, as to how it should be and how it should run. The corner is somewhere near the North Fork, you might say at the edge of the North Fork, down below Jno. M. Carter's house, where it was then, commencing at that corner and running through the bottom and up the hill to the coal road and with the coal road to the branch

known as Bob Branch and with that branch to the Fork and with the Fork down to the corner.

Q. 9. You were present, then, when the partition was made between them?

A. I suppose I was. The corner was made and agreed on then.

Q. 10. The parties both agreed to that division, did they?

A. Yes sir.

Q. 11. From and after that time did Jno. Carter take possession of the part he got by the division?

A. He did.

(The foregoing question is objected to, because leading and because immaterial and irrelevant. Under the law, a partition between joint owners cannot be made by parole, but it must be by deed. J. C. Noel.)

Q. 12. What did he do with said land, if you know?

A. He cultivated it and finally sold it to Charley Russell I think; but he was on the land when I lived there and cultivated it when the time of year come to do so and lived in a house on it.

Q. 13. At the time of said partition, how many houses were on the piece Jno. Carter got?

A. Well, sir, you are too hard for me. Whether there was but one or two, I don't know; I don't remember; I can't answer that question.

Q. 14. From and after the date of the said partition, who took possession of the residue of the said tract of land?

A. Henry Pennington.

Q. 15. Did you continue to live on the land after that time?

A. I lived on the land a little over twelve months after that time.

Q. 16. To whom did you pay rent?

A. Henry Pennington. Now after that time I didn't rent all the land. I rented only a part of it.

Q. 17. Who rented and cultivated the residue, if you know?

A. Jno. M. Carter.

Q. 18. Did he rent from and pay rents to Henry Pennington?

A. I know he paid the rent to Henry because I hauled the corn to him.

Cross examination by J. C. Noel:

Q. 1. When was the partition made between Jno. M. Carter and W. H. Pennington?

A. I couldn't answer that question. It was while I lived there; it was shortly after the land was sold.

Q. 2. Had the deed been made by the commissioner at the time this partition was made?

A. I couldn't tell you.

Q. 3. In what year did you move from said land?

A. I couldn't tell that, but I stayed there a little over a year after the partition was made.

Q. 4. Were you present at the sale?

A. No sir.

Q. 5. Was not this partition line agreed on between Jno. M. Carter and Henry Pennington a few days before the sale?

A. I don't think it was from the talk. They come and told me that Henry bought the land and the partition line was agreed upon afterwards, I suppose.

Q. 6. Was it in the same year the land was sold that this partition was made.

A. Well, it seems to me like it was; I don't know. I first rented of Jim and paid rent to Jim, and then the land was sold and then I had to re-rent of Henry Pennington.

Q. 7. Where have you lived since said partition was made and how long at each place?

A. Well, I lived where I live now, I couldn't tell you how long I have lived there, unless I had some dates to refer to.

Q. 9. How long after you bought the land you now live on from Parkey and executed your note to him for \$100 was it that you moved on said land?

A. That note you got don't tell anything about that. The first note I executed was while I lived there and the last note which you have got was executed after I left there. The sale of the land I suppose would tell the time. I bought the land of Parkey while I lived there, and, I think, after I left there--a summer or winter after I bought it--the fall before I left maybe it was, the other note was executed. I took them two notes in and executed another. I moved off of the land the March after the date the note of August 29, 1898 was give.

Q. 10. Then it was before August 29, 1898, that the partition you spoke of was made?

A. I think so.

And further this witness sayeth not.

Signature waived. Witness claims 50¢.

WM. M. COOPER.

VIRGINIA, LEE COUNTY, TO-WIT:

I, Pearl Summers, a Notary Public in and for the county and state aforesaid, do hereby certify that the above depositions were taken and sworn to before me at the time and place stated in the caption.

Given under my hand this 16th day of September, 1904.

Pearl Summers - N. P.

Notary Fee: \$4.00

No M. Carter & al

vs-

W. H. Remington & al.

Deponents of
Jas S. Remington & al.

Filed Sept 17, 1904-

J. H. T. Ewing
Clerk.

TO -

~~X~~ JOHN M. CARTER, ~~X~~ E. F. CARTER and ~~X~~ E. L. NOEL: ~~X~~

You are hereby notified that the undersigned will, on the 27th day of November, 1908, between the hours of 8 a. m. and 6 p. m., at the law office of E. W. Pennington, at Pennington Gap, Lee County, Virginia, proceed to take the depositions of J. A. Cauffman and others, to be read as evidence in behalf of the defendants in a certain suit in chancery now pending in the Circuit Court of Lee County, Virginia, wherein John M. Carter and others are complainants and W. H. Pennington and others are defendants.

If, for any reason the taking of said depositions be not commenced on the aforesaid date, or if commenced, are not concluded, then the taking of the same will be adjourned from day to day at the same place and between the same hours until completed.

This the 11th day of November, 1908.

W. H. PENNINGTON,
A. N. PENNINGTON,

By Imogene A. Harrison
Counsel.

original

Exeuted Nov 21
1908 By Deliberating
atene copy of
Notice to John
Mo. Carter and
E. H. Carter and
E. L. Wall in
S. L. Co. via
E. S. St. Peter & S.
for W. Y. Tucker
S. S. C.
516

The depositions of John M. Carter and others taken pursuant to notice hereto attached, by agreement of counsel, -- the place of said deposition being changed from the law office of E. W. Pennington to the law office of J. C. Noel -- on the 27th day of November, 1908, before Charles C. Bales, a notary public for Lee County, Virginia, to be read as evidence in behalf of the defendants in a certain suit in chancery, now pending in the Circuit Court of Lee County, Virginia, wherein John M. Carter and others are complainants and A. N. Pennington and others are defendants.

P R E S E N T - J. C. Noel, counsel for complainants;
A. K. Morison, counsel for defendants.

J. A. Cauffman, a witness of lawful age, being first duly sworn, deposes and says:

Direct Examination -

By Mr. Morison-

Q - Mr. Cauffman, what is your age, your occupation and where do you live?

A - Occupation, farming; I live in the Pocket Country, up here in Lee County, Virginia. My age is 38 yrs., or something near.

Q - Did you purchase a piece of land once owned by C. D. Russell, in the Pocket Country, and do you now own the land?

A - Yes, sir.

Q - What is the acreage of the land in question?

A - The deed calls for 5 acres, I believe, more or less.

Q - Is it a part of what is known as the "Planing Mill" tract?

A - Yes, sir.

Q - Did you purchase all of the land Russell owned in the Planing Mill tract?

A - Yes, sir.

Q - What was the condition of the land at the time you bought it, as to the improvements and the like?

Objection by Mr. Noel -

The foregoing question and any answer thereto are objected to; also the whole of the foregoing deposition is objected to, because under Section 2413 of the Code of Virginia no voluntary partition of land can be made except by deed; defendants having failed to show that said partition was by deed. The question of improvements is immaterial and irrelevant.

A - There was no improvements on it when I came in possession of it only the house I live in and a small crib. There were two more houses on the piece of land but they were moved away before I came in possession of it.

Q - Do you know who moved the houses away and what kind of houses they were?

A - They were box houses; very good little houses. They were sold to Luther Slemp and he moved them away.

QA- Do you know who sold the houses to Slemp?

A - I think Charlie Russell.

Q - Is this the same C. D. Russell of whom you purchased?

A - Yes, sir.

Q - Where is this tract of land located with reference to Pennington Gap, that you now own?

A - Well, it is rather North from here, I guess; on the North Fork of Powell's River.

Q - Does the public highway pass along or through it?

A - It passes by; yes, sir.

Q - The entire length of the tract of land; that is, of the tract you own?

A - The entire width of the land.

Q - How far is the land from Pennington Gap?

A - Two miles, I guess.

Q - Is the highway in question one that is often traveled?

A - Yes, sir.

Q - Is it one of the main public highways of the county or not?

A - Yes, sir.

Q - Did you ever hear J. M. Carter make any statement regarding his deed from R. L. Pennington, Special Commissioner; if so, state what this statement was?

A - Objection by Mr. Noel -

Objected to because immaterial and irrelevant.

A - I did one time. He told me that he got Bob Pennington to make him a deed for his half interest of the Planing Mill property and he put it to record, and that he gave Pennington \$5.00 for making the deed.

Q - Is that all the statement he made?

A - I believe so, he wanted to sell me the remainder of it, and I told him I was not able to buy it. He wanted to sell me the remainder, if he got it, and I told him I was not able to buy it.

Q - He said if he was successful in this suit he wanted to sell you the remainder of the land?

A - Yes, sir.

Q - Who was at that time in possession of the remainder of the Planing Mill tract of land?

A - Mr. Pennington was controlling the land at that time. I rented a part of it adjoining me.

Objection by Mr. Noel -

The foregoing question and answer thereto are objected to

because immaterial and irrelevant, and also not the best evidence as to who is the owner of said land.

(Mr. Noel) The whole of the foregoing deposition is objected to because irrelevant and immaterial, but not waiving said objection but insisting thereon, witness is cross-examined, as follows:

Cross Examination -

By Mr. Noel -

Q - What was the value of the two little houses that you say were sold to Luther Slemph and removed from that portion of the tract of land that you now claim to own?

A - I would not hardly know. One was a right good little house and the other was not worth quite so much. I could not state now just what it would be worth.

Q - Do you know what Mr. Slemph paid for them?

A - No, sir; I do not know. I was living there when he tore them down, but I do not know what he paid for them.

Q - What, in your judgment, were they worth?

A - Well, I could not say. I am a poor judge in lumber business that way.

Q - How much did you pay C. D. Russell for the 5 acres that you now own and the house in which you live?

A - I paid him \$160.00.

Q - Were either of the houses removed as good as the one in which you live?

A - One was a better house than the one I live in.

Q - You paid \$160.00 for the 5 acres and the house in which you live?

A - Yes, sir.

And further this deponent sayeth not.

Also the deposition of Mary E. Carter, a witness of lawful age, being first duly sworn, deposes and says:

Direct Examination

By Mr. Morison -

Q - Mrs. Carter, are you the wife of J. M. Carter, one of the complainant's in this suit?

A - Yes, sir.

Q - Do you know anything of the joint purchase of the Planing Mill 30 acre tract of land by your husband and W. H. Pennington?

A - Henry's father came and asked for money to buy the land at the Court House, and we were to have one-half and Henry the other half and we gave him the money to buy it with \$150.00; but Henry, himself, I do not know that I ever heard him mention it. Then, sometime along, maybe twelve months, maybe not over six months, I was down at Jonesville at Camp Meeting and he said he had a deed made there for one-half interest in that land and John said what does the deed cost to lift it, and he said \$5.00 and John went in and paid him \$5.00 and brought it out and we took it home.

Q - What was the total price paid for the 30 acres?

A - I could not tell you that. If I have heard, I have forgotten.

Q - Do you know anything of the division made by your husband and W. H. Pennington to the land in question?

A - Well, nothing more than what I heard him talk about before he went to the court house and bought it ----- That was J. D. Pennington and my husband ----.

Q - Where was the division line run between your husband's land and Pennington's land?

A - Something near a cross fence, he said. I think it was on the side next to where we live from the Dry House?

Q - How much of the eastern end of the place would this division give to your husband?

A - I could not tell. The way he took it, it would be half of it; about where he thought one-half would run.

Q - After this division was made, did your husband ever rent and cultivate any land west of the line of Mr. Pennington?

A - I do not actually remember about it. We cultivated some land the first year and then after that we rented some of J. D. Pennington, and it seems that we attended some of the land the second year, but I do not know how much. I was sick nearly 12 months while we lived there and I did not pay much attention to anything that went on, and it has been some time and I do not remember.

Q - Was the land your husband rented the second year near the division line between your husband's land and Pennington's land, or not?

A - Objection by Mr. Noel -

The foregoing question and any answer thereto is objected to because the witness has not stated that her husband rented any of the land in controversy the second year, having merely stated that he attended some of it.

A - I could not say whether he rented any the second year we lived there or not, because I have forgotten; perhaps I knowed at the time; then I was sick part of the second year that we lived there; we attended some land but I do not know whether he attended or rented or not.

Q - Was there a division fence built on this division line?

A - Yes, sir; this that he pointed out where the line should run. I saw them standing out in the road pointing and talking and he said to me, I would love for you people to stay here; I want you to have part of the land, and he says if you will give me \$150.00 I will have the land sold and bid in for you and Henry, - that was his boy -. We gave brother Jim the money and he said he went on and bought the land. Of course, we got a deed from the court for one-half interest in 35 acres.

Q - Was there a division fence between your husband's land and Pennington's land?

A - There is a fence there and he pointed out and said that that line would be about one-half of the land.

Q - Was the fence built on the line?

A - The way he talked, it was.

Q - The fence was built on the line?

A - Yes, sir. That is the way I understood it. The way I understood it, we were to have the East end.

Q - Can this fence be seen from the Public Road?

A - Well, it is not there now.

Q - What kind of fence was it?

A - Plain fence.

Q - How high?

A - I could not state that. It has been so long ago.

Q - What is your best recollection as to when this fence was removed?

A - I could not tell that. It has been moved sometime since we lived there. Who moved it and when it was moved, I could not state that; I do not think it is there yet.

Q - Was it known or not, Mrs. Carter, in your vicinity who was in possession of the land East of the fence, and who was in possession of the land West of the fence, after you and your husband moved on the land.

A - Well, the way I supposed, it was, the way I thought it, Brother Jim Pennington was, but it was going to be sold.

Q - After the division fence was put up and after you and your husband moved on the eastern end of the land, was it generally known in that vicinity who was in possession of that part of it which lay East of the fence and that part which lay West of the fence?

A - Objection by Mr. Noel -

The foregoing question and any answer thereto is objected to because the witness has not stated that the division fence was

made after the joint purchase; and, further, as the witness has already stated that she and her husband were living on the Eastern end of the land at the time the joint purchase was made.

A - I suppose it was.

Q - Who was in possession of the Eastern end of the place and who was in possession of the other end?

A - We were in possession of the upper end of the place next to Mrs. Garrett's land, and the Penningtons, I suppose, was in possession of the other end. I saw they went ahead and tended it, or rented it.

Q - How long did you and your husband live on the land, Mrs. Carter?

A - Sometime near two years before we bought and afterwards altogether. We moved ^{away from} there some time after we bought, but I do not remember just how long. The first year we moved there we rented of Mr. Pennington and during that year we bought that end of it.

Q - When you and your husband conveyed to C. D. Russell, was it or not your understanding that you were selling all of your land there?

A - I do not know about that; I could not tell.

Q - After you made title bond or deed to Russell, did you understand that you still owned more land in the Planing Mill tract?

A - Yes, sir; the way I understood, we had a deed then calling for 35 acres, and we deeded Mr. Russell so much of it.

Q - Does not your title bond to Mr. Russell purport to convey all of your interest in the Planing Mill tract?

Objection by Mr. Noel-

The foregoing question and any answer is objected to because the title bond is the best evidence.

A - I do not remember it that way.

CROSS EXAMINATION

By Mr. Noel -

Q - As I understand you, Mrs. Carter, you understood from the conversation between J. D. Pennington and your husband at the time your husband furnished money to buy the one-half interest in that piece of land that your husband was to have one-half of the tract and not the little strip that your husband afterward sold to C. D. Russell?

A - That is the way I understood it.

Q - This fence^{that} was pointed out by Mr. Pennington as would probably be a division line was not the fence that bounded the piece of land sold to C. D. Russell by your husband?

A - It did as far down as it reached; I mean, the width of the land, but if it run up on the hill, I did not understand it that way. Perhaps the way he talked that fence would go as far down as ours would reach when it was divided.

Q - Then your understanding was that your husband was to have the eastern half of the tract of land and W. H. Pennington was to have the western half?

A - Yes, sir.

Q - Did this fence that you speak about run entirely across the tract of land; that is, from the road clear across to the upper side of the land?

A - No, sir; I do not think it did. I think it just run a certain distance and then turned around. The way I remember it, it just run so far and then went back towards the Garret line. That is the way I remember it.

Q - As you understood it, your part of the land was not to stop at the end of that fence, but was to go on through the tract of land?

A - Yes, sir.

Objection by Mr. Morison -

The foregoing question and the three preceding questions are objected to because the questions are in themselves answers, and

therefore improper.

Re-direct Examination

By Mr. Morison -

Q - Mrs. Carter, what did your husband get for the land he sold C. D. Russell, as to the best of your recollection?

A - I do not exactly remember, but I think it was somewhere from \$80.00 to \$100.00; I do not exactly remember.

Q - Did he sell him the two houses off of the land?

A - No, sir; only what he sold Mr. Russell -- he sold him a piece of land and sold him the houses with the land.

And further this deponent sayeth not.

Signature waived.

Also the deposition of J. M. Carter, who being first duly sworn, deposes and says:

Direct Examination by

Mr. Morison-

Q - Mr. Carter, what is your age, occupation and where do you live?

A - Age 44 yrs., farming in the Pocket Country, Lee County.

Q - Are you one of the complainants in this suit?

A - Yes, sir.

Q - When you lived on the Planing Mill tract of land, how much of it did you have in your possession, and how much of it did Mr. Pennington have in his possession?

A - Well, sir; my mind is kind of tangled on that. At the time I bought this land I had it all in possession; but I am not positive of that.

Q - Of whom did you rent?

A - J. D. Pennington.

Q- Did you rent land near the division fence of Mr. Pennington?

A - Yes, sir; on both sides

Q - You rented land on the east of the fence and on the west of it, of Mr. Pennington?

A - Yes, sir; that is my recollection.

Q - What is your best idea as to the number of acres that lay east of the land you rented of Mr. Pennington?

A - I do not know.

Q - Give me your best idea on that?

A - If I am right about it, I rented both the east and west end of it -- the way I remember -- the first year I went there I had the tract of land all rented -- I am not positive about it.

Q - How much of the land did you live on and that you cultivated that you did not rent of Mr. Pennington?

A - I am not positive whether I paid rent on the eastern end of the place or not, but my recollection is that I did not.

Q - How much of it was there that you did not pay rent on?

A - The best I can guess, it was something like three acres that I did not pay rent on.

Q - Where does this land lay with reference to Pennington Gap?

A - Something near two miles.

Q - When you came to Mr. Noel in this matter, did you or not tell him what you claimed and what Mr. Pennington claimed of the land in question?

A - Yes, sir; I think I did.

Q - How much timber was there on the land when you first purchased it?

A - I do not remember how much there was on it. What I would call on the west side, of it, there was a strip of timber which run in the mountain around the ridge.

Q - What was the acreage of the timber land of the tract?

A - I do not think there was over ten acres.

Q - Who cut this timber?

A - I helped to cut a part of it.

Q - What did you get for the part you cut?

A - Nothing.

Q - What did you do with it?

A - Mr. Pennington cut it up.

Q- To whom did you sell your part of this land?

A - I sold to C. D. Russell a certain portion of land lying near the public highway. About the way I deeded to him, my recollection is three acres, more or less.

Q - To whom did you sell the remainder?

A - Have not sold any.

Q - What did you get for the land you sold Mr. Russell?

A - Well, sir; I got a piece of mountain land; I do not remember what the piece of land was valued at at the time.

Q - What was the acreage of the mountain land?

A - I do not remember that.

Q - Was it as much as 25 acres?

A- I had the land surveyed out but I do not remember the acreage.

Q - Did you not make a deed to E. F. Carter for this land?

A - Yes, sir; it seems that I did.

Q - How much did you convey to him?

A - One-half interest.

Q - Did you make a conveyance to Mrs. E. L. Noel for some of this land?

A- I think I made a conveyance to J. C. Noel, is my understanding; it was drawn to E. L. Noel.

Q - What was the trade between Mr. J. C. Noel, with whom I understand you made this transaction, at the time you executed the deed to Mrs. E. L. Noel?

Objection by Mr. Noel

The foregoing question and any answer thereto is objected to because the deed is the best evidence and shows the consideration.

A- Well, sir; the way I remember it, I gave him my deed and told him the circumstances of this land, and I deeded him a one-fourth interest in it to look after it; that is the way I understood it.

Q - Was he to have one-fourth interest in all that you claimed, or one-fourth interest in what he recovered?

A - One-fourth interest in what I claimed of the land unsold.

Q - Cross Examination by
Mr. Noel -

Q - Mr. Carter, state as nearly as you can, the trade you made for that land with W. H. Pennington, or J. D. Pennington, his agent?

A- I never had any trade with Mr. W. H. Pennington, in my remembrance. The trade I had with J. D. Pennington: he came to me and said to me, he said "John, I am about to lose my home, you have a little money and I know it." And he further went on and made a proposal with me for to give me one-half interest in the Planing Mill property if I would give him \$150.00 to pay one-half of the debt which was against him - a deed of trust belonging to a company, I do not remember at this time the name of it, think a machine company -. I gave him the money and he went on to court and paid off the cost and commissioner with my money and brings me back receipts showing that he had paid it, and R. L. Pennington was to deed me one-half interest in it, which he did.

Q - State whether or not any division line was made between you and W. H. Pennington, or J. D. Pennington, his agent?

A- There was not.

Q - Was there any understanding between you and Mr. Pennington as to which one-half of the land you were to have and which half he was to have?

13- A - Yes, sir; I was to have one-half interest on the eastern
wa

end of the place.

Q - You spoke in your deposition in chief about having rented the cleared land in controversy; state whether or not this renting was before or after the joint purchase?

A - I am not positive about that.

Q - Had you rented it when you moved there.

A - Yes, sir.

Q - Were you living there at the time you made the joint purchase?

A - Yes, sir. I had it rented, and it has been so long that I do not remember how that was.

Q - Did you and W. H. Pennington or J. D. Pennington ever make a division of that piece of land?

A - No, sir.

Q - When you came to me, J. C. Noel, to take charge of and bring suit to recover or partition this land; did you not expressly state that the only contract between you and Pennington was that you were to have the eastern one-half of the land and him the western?

A - Yes, sir.

Q - Objection by Mr. Morison

The foregoing question and answer are objected to because the witness has hereinbefore answered this question, and is therefore immaterial.

Q - Did you ever explain to me at the time you employed me to institute suit for you that J. D. Pennington or W. H. Pennington had divided the land?

A - No, sir.

Objection by Mr. Morison -

The foregoing question and answer are excepted to, because the witness has answered this question on direct examination, and it is therefore immaterial, and further, because the question calls for a self-serving answer of the witness.

Q - State whether or not, in your examination in chief, when you were asked the question - "If you explained to me the claims of Pennington;" that you understood that question to embrace the claims that Pennington now sets up in the defence of this case? (Question re-put)

When you were asked in your examination in chief the question - "When you came to Mr. Noel in this matter, did you or not tell him what you calimed and what Mr. Pennington claimed of the land in question " - Did you understand that question to embrace the defence that the Penningtons are now making in this suit?

A - Yes, sir; if I understand the question, I think it was.

Q - Did you explain to me that Penningtons were claiming; that you and they made a division of the land and that you were to only have the amount that you sold Charlie Russell?

A - No, sir; I did not.

Objection by Mr. Morison -

The foregoing question and answer thereto arã excepted to because the same identical question has been twice asked and answered by the witness and because it calls for self-serving answer of the witness.

Q - State whether or not you ever heard or not what defence the Penningtons would make in this suit until after the suit was instituted?

A - No, sir; I did not.

Q - Objection by Mr. Morison, for same reasons as in last objection.

Q - At the time you sold C. D. Russell a portion of this mill tract of land, what was that tract of land, taking in the whole tract, reasonably worth per acre?

A - If I would have been buying it by the acre, I would not have wanted to give over \$10.00 for it at the time it was sold.

Q - At the time you sold to C. D. Russell; not at the time you bought it?

A - I do not know what it was worth; the whole tract of it, or what land was worth at that time.

Q - How much were the two little houses reasonably worth that weremoved off of the tract of land?

A- It would only be a guess at it. I would value the houses at somewhere about \$30.00. I helped to manufacture the lumber that went into the houses.

Q - You think \$30.00 would have been a fair price for the two little houses?

A - It seems to me that it would be; theywere very small, and the best I remember about it, Mr. C. D. Russell told me he got \$30.00 or \$35.00.

Re-direct Examination by

Mr. Morison -

Q - Mr. Carter, when you first came to Mr. Noel what did you explain to him about the suit; that is, your claim and Pennington's claim as to the land in controversy?

A - Well, sir; the way I remember, as I told him about it: I told him I was a poor man and I told him Mr. Pennington had gone away; and I made him this offer, and he agreed to take one-fourth interest in the land, and I deeded it to him.

Q - Did you tell him at that time what you claimed of the land and what Pennington claimed?

A- Yes, sir; I told him I claimed one-half interest, and I think I showed him my deed.

Re-cross examination by

Mr. Noel-

Q - What did you tell me that Pennington claimed?

A - Well, sir; if I ever claimed anything but one-half interest, it is more than I ever knew anything about.

Re-re-direct examination by

Mr. Morison -

Q - At this time, did Mr. Pennington have more than one-half
his
of the land in possession?

A - Yes, sir.

Q - How much more?

A - Something like, about three or four acres; part of
it uncultivated.

Q - And was claiming it?

A - Yes, sir.

And further this deponent sayeth not.

Signature waived.

By Agreement of J. C. Noel, counsel for complainants, and
A. K. Morison, counsel for defendants, it is agreed that the
foregoing depositions of J. M. Carter and others may be taken by
J. G. Nesbit, stenographer, and by him transcribed, and the
transcript is to be regarded for all purposes as if written out
at length at this time.

I, Charles C. Bales, a notary public, for the county of
Lee, in the state of Virginia, do hereby certify that the
foregoing depositions of John M. Carter, J. A. Cauffman,
Mrs. Mary E. Carter and J. M. Carter were sworn to and taken
before me in my county and state aforesaid, at the time and
place and for the purposes mentioned in the caption.

Given under my hand this the 28 day of November, 1908.

Charles C. Bales

Notary public for Lee County, Va.

17-

Big Stone Gap, Virginia, Nov. 27-08.

J. G. Nesbit, stenographer, fee for taking and transcribing
above depositions, 8 hours ----- \$4.50

Charles C. Bales, Notary Public, fee

\$1.50 Paid

By agreement of counsel the deposition of J. C. Noel is here taken, to be read in behalf of the complainants, without formal caption, and who having been duly sworn, deposes as follows:

Q - State the conversation that occurred between yourself and J. M. Carter at the time you were employed as counsel by him to institute this suit?

A - Mr. Carter came to me and said: " I bought a one-half interest in what is known as the "Planing Mill" tract of land, supposed to contain about 36 acres of land," and exhibited to me a deed from Commissioner, R. L. Pennington, for a one-half interest in said tract of land, and says, further, "I have no money with which to pay a counsel, I am a poor man; Mr. Pennington has moved away to Kentucky and I want the land divided; there is some little previous transaction between yourself and me and if you will square them and take the case for one-fourth interest in that part of the land which I have not already conveyed to C. D. Russell, I will employ you to bring this suit." We agreed upon those terms when I took, as I remember, the contract from Mr. Carter, and shortly afterwards had him to execute a deed for the one-fourth interest. Mr. Carter did not explain to me that Mr. Pennington claimed any more than one-half interest in the land, or I never heard that he claimed any more than one-half interest in the land until after the institution of this suit.

And further this deponent sayeth not.

Signature waived.

By agreement of J. C. Noel, counsel for complainants, and A. K. Morison, counsel for defendants, it is agreed that the foregoing depositions may be taken by J. G. Nesbit, stenographer, and by him transcribed, and the transcript is to be

1-

regarded for all purposes as if written out at length at this time.

I, Charles C. Bales, a notary public, for the county of Lee, in the state of Virginia, do hereby certify that the foregoing Deposition of J. C. Noel was sworn to and taken before me in my county and state aforesaid, at the time and place and for the purposes mentioned in the caption.

Given under my hand this the 28 day of November, 1908.

Charles C. Bales

Notary Public for Lee County, Va.

John M. Carter, et al,
vs. } Depositions for
} Defendants -
W. H. Pennington, et al,

Received by mail in
good condition and
filed Dec. 1st, 1908.

J. C. Ewing,
Clerk.

The depositions of John M. Carter and others taken before Charles C. Bales, a notary public for Lee County, Virginia, at the Law offices of E. W. Pennington, at Pennington Gap, Lee County, Virginia, on the 31st day of August, 1908, pursuant to notice hereto attached, to be read as evidence in behalf of the defendant in a certain suit in chancery now pending in the Circuit Court of Lee County, Virginia, wherein John M. Carter is plaintiff and William Pennington is defendant.

- P R E S E N T -

John M. Carter ----- Plaintiff;
William Pennington ----- Defendant.

A. K. Morison, counsel for Defendant.

E. F. Carter, a witness being first duly sworn deposes and says:

By.Mr. Morison:

Q - Mr. Carter, what is your age; your occupation and where is your place of residence?

A - My age is 31 yrs., and my occupation, working in a store; my residence is St. Charles, Va.

Q - Are you familiar with the tract of land purchased by John M. Carter and Henry Pennington, known as the "Planing Mill" tract of land, in this county?

A - Yes, sir; I know the tract of land all right.

Q - When was this tract of land purchased by the parties named, if you know?

A- I do not know.

Q - Do you know how long John M. Carter has had an interest in the tract?

A No, sir; not for sure, I do not.

Q - What is your best recollection?

A - My best recollection would be about 12 years; that is merely a guess at it.

Q - How long after the sale by R. L. Pennington, Commissioner, was it before John M. Carter took possession of his part of the land in question?

A - I do not know.

Q - Did John M. Carter ever convey any of this land to you?

A Yes, sir; he made me a deed for his entire interest in it; as I remember it.

Q - How long ago has this been?

A- That has been five or six years ago.

Q - What was the consideration for that conveyance?

A - I do not remember. It was either \$50.00 or \$ 150.00.

n Q - I am speaking of the conveyance from Carter to you?

A- You are speaking of the sum and consideration.

Q - Yes.

A - Well the sum was either \$50.00 or \$150.00, I do not remember which.

Q - Paid at the time in cash?

A - It was to be paid but it never was paid.

Q - Why was it never paid?

A - He was leaving and going West and he only conveyed this to me in order to look after it for him.

Q - To make sale, if necessary?

A - It was either intended to be in court or was, I do not know which.

Q - Did you sell any of the land in his absence?

A - No, sir; never had the deed recorded.

Q - Was the deed never put to record?

A - No, sir.

Q - How much of the Planing Mill tract of land did you understand to pass by that deed?

A - My understanding was that there was 35 acres in the tract, and that I had a deed for one-half of it, or that my deed would cover one-half of it.

Q - Do you know whether a division of the land had ever been made by Mr. Carter and Mr. Pennington?

A - No, sir; I do not know; I heard there was.

Q - Do you know how the land was divided?

A - No, sir; I do not know that. I have heard about it, but I do not know.

Q - Did you ever hear John M. Carter complain of the division?

A - Yes, sir: I heard him say that he had not gotten what was due him, but I do not remember how he came about that.

Q - How long after Mr. Carter and Mr. Pennington bought the land of R. L. Pennington, Commissioner, did you hear him complain of the division?

A - I could not say, but believe it was while he was living on the property?

Q - What is your best recollection?

A - I do not know; it might possibly have been a year and it might have been longer.

Q - Did he live on the place for some time?

A - Yes, sir; he lived there for some time.

Q - On the eastern end of it?

A - Yes, sir; on the portion that John Cauffman now lives.

Q - How many houses were on the eastern end of it which John M. Carter had in possession?

A - I do not remember whether there was more than one dwelling house or not; there was two, but I do not remember whether the second house was on his side or not, but I believe it was.

Before John M. Carter complained of the division between Pennington and himself, how much land did you understand was in his half of the tract?

A - It seemed to me at the same time that he was doing this talk that he only got three acres or about that, as I remember it.

Q - Did you know where the division line ran?

A - No sir.

Q - A moment ago you said that you did not know whether one of the houses was on John M. Carter's side or on Pennington's side; where did the line run with reference to this house?

A - That house was very close to where he said the line was; it was through bottom there and as I remember there was nothing there to designate the line by. He has shown me where the line laid but I do not know just now where the line was at.

Q - Does the present owner of the land, Cauffman, claim the same line that Mr. Carter then claimed?

A - I do not know, but I expect that he does. I never heard Mr. Cauffman say anything about the land.

Q - Did you ever hear John M. Carter say anything as to what he had sold Cauffman?

A - I heard him say that he had sold Cauffman the portion that he had laid off to him, or something like that.

Cross Examination By Mr. John M. Carter -

You do not know anything about where the J. D. Pennington line is that was laid off that he wanted me to take?

A - No sir, I do not.

And further this deponent sayeth not.

Signature waived.

J. M. Carter, another witness of lawful age, being first duly sworn, deposes and says:

By Mr. Morison -

Q - Mr. Carter, what is your best recollection as to date you and Pennington purchased this tract of land?

A - I have not got any recollection about the date. I could not give you any dates at all.

Q - How long after you purchased it was the division made?

A - There nevee was any division made to my knowledge about it.

Q - How long after the purchase by you and Pennington, did Mr. Pennington point out the line?

A I do not remember that.

Q - What is your best recollection?

A - My recollection is one Fall that we had a dispute over the cane that was sown on the land I claimed rent, but he did not give me any; but it strikes me that it was one year, may be two.

Q - What was contended about the line at that time?

A - I do not know.

Q - You contended that the cane was on your side?

A - It was on the undivided land. I do not remember of me and Henry Pennington having any conversation about this land; me and J. D., his father, met in the road on the back of the river and he pointed out a certain portion of land he wanted me to take a half interest in it and I suppose it was

something like two acres.

Q - You were to take the eastern end of this tract of land, what is known as the "Planing Mill" tract of land?

A - Yes.

Q - Mr. Carter, I neglected to ask you; you are the plaintiff in this suit, are you not?

A - I suppose so, yes sir.

Q - You were to have the eastern end of the tract?

A - Yes, sir.

Q - How many houses ^{were} on that end of it?

A - The best recollection I have, there were three.

Q - What kind of houses?

A - Two of them were very small.

Q - And the third?

A - The third was a small house. I think it is about 14'x 30'.

Q - How long did you live on this land after your purchase?

A - I do not remember.

Q - Did you live as much as three years?

A - I do not think I did; I lived two or three years.

Q - How much of the land did you cultivate while you were living there?

A - I am not positive; it strikes me that I cultivated it all one year, or a portion of it, at least.

Q - You sold some off this planing mill tract to a man by the name of Russell?

A - Charlie Russell.

Q - How much did you sell Russell?

A - I sold him a small piece; about two or three acres.

Q - As much as five or six acres?

A - No sir.

Q - Were all three of the houses on the tract you sold Russell?

A - I think so.

Q - What did he pay you for the land?

A - I swapped for a piece of other land.

Q - What size piece of land did you swap for?

A - It strikes me 30 acres.

Q - What kind of land?

A - Very poor.

Q - Any timber on it?

A - No, sir.

Q - What would be a fair value?

A - I think I sold it for \$2.50 an acre.

Q - When did you sell J. C. Noel an interest in the subject matter of this litigation?

A - When this suit was first brought.

Q - Did you know at that time that Pennington was claiming all of the land except that part that you had sold to Cauffman?

A - No, sir.

Q - What did you understand as to Mr. Pennington's claims at that time?

A - Well, I supposed they claimed it from the start. They seemed to cut timber and work on it as though it was theirs. I was a renter on the place at that time.

Q - How long have the Pennington's had possession of this land; from the time you and Henry Pennington purchased?

A - Yes, sir.

Q - You say they cut timber from the land?

A - They cut the logging timber and also mining timber.

Q - Over all of the land?

A - Principally all of it.

Q - Did Mr. Noel know this?

A - I do not know, sir; I suppose he did.

Q - How far is the land from Mr. Noel's residence?

A - It is something like two and a half miles or three miles, I suppose.

Q - Did Mr. Noel understand when you engaged him to attend to this litigation and when you sold him an interest in the land that the Penningtons were in possession of it?

A - I suppose that he did.

Q - What interest has Mr. Noel in this land?

A - One-fourth interest.

Q - One-fourth interest in whatever you may be able to recover besides that you sold to Russell?

A - Yes, sir.

Statement by Mr. J. M. Carter

My impression is now since I came to think about it, that this land that I cultivated beyond the bench of the mountain was cultivated before I came in possession of the land.

And further this deponent sayeth not.

Signature waived.

Mary E. Carter, another witness of lawful age being first duly sworn deposes and says:

By Mr. Morison -

Q - Are you the wife of John M. Carter, the plaintiff in this suit?

A - Yes, sir.

Q - Do you know anything, Mrs. Carter regarding the division of the tract of land involved in this suit between Mr. Pennington and Mr. Carter?

A - Well, I remember a little something about the talk about their trading for the land, and of Pennington pointing out the line.

Q - Do you know where the line runswith reference to the house on the eastern end?

A - Just below the lower house, right up across the plank fence.

Q - Is that the line that John M. Carter sold to Russell?

A - Well, the line runs down to that fence and then back to the foot of the hill.

Q - Is the line that Pennington pointed out Russell's boundary line?

A - Yes, sir, I think it is.

Q - How long did your husband and you live on this land?

A - As I remember, we lived there two years.

Q - Did your husband have out any crops while you lived there?

A - Yes, sir; for two years.

Q - Did he cultivate up to the line that Pennington pointed out?

A - A part of the way he did. The way I understood it, the line was to run to the top of the hill and all of the land was not cleared up to the top of the hill --- the land was not cultivated beyond the line.

Cross examination by Mr. John M. Carter.

Q - Do you remember who this deed was made to?

A - I do not remember which it was. We had a commissioner deed from the court, and I do not remember whether it was made to him or to me.

Q - The summer that you laid sick so long at that place do you remember about the ground, who attended it that year?

A - I think you attended the ground; it was the first year that you paid Mr. Pennington rent, and the next year I do not think there was much of it attended.

Q - Did we ever cultivate any of the lands which is on the brink of the hill, which was laid off to us?

A - I do not know whether we attended all the first year or not.

Redirect examination-

By Mr. Morison -

Q - Mrs. Carter, did your husband ever rent any land of Mr. Pennington, just across from the line that Pennington pointed out, on the same hill.

A - Do you mean farther out on the west-end?

Q - Going from the eastern end and going to the line, did he ever rent on the other side of the line from Mr. Pennington?

A - Well now the first year he rented, I think, a portion of the land that was cleared up and attended, but the next year I do not think he attended much any where.

Q - Now the first year how close was this land to the line that he pointed out?

A - I think he cultivated all around it. I think he had it all in cultivation the first year; but the next year I do not know how much he attended.

Q - Mr. J. A. Cauffman, another witness being first duly sworn, deposes and says:

By Mr. Morison -

Q - State your age, residence and occupation?

A - My age is 38 yrs., farming principally, I live up here in Lee County, in the Pocket Country, as they call it.

Q - Did you purchase of Mr. C. D. Russell the eastern end of what is known in this litigation as the Planing Mill land, and which is the same land that Mr. Russell purchased of Mr. J. M. Carter?

A - Yes, sir.

Q - Do you know that this is the same land that Russell bought of Carter?

A - Yes, sir.

Q - How many acres does the tract contain that you purchased?

A - The deed I have calls for 5 acres, more or less, that I got of Russell.

Q - How many acres are in the boundary?

A - Well, I suppose, there would be something near five acres. I do not suppose it was ever run out.

Q - How long have you owned the land?

A - I bought it in 1900.

Q - How long did Russell own it before he sold it to you?

A - Well, I do not exactly know; not very long though, something like a year, I guess; I rented it of Russell one year; may be he owned it two years.

Q - Do you know where the division line between the tract of land you own and Mr. Pennington's land runs?

A - Yes, sir; I know where the line is between me and he.

Q - Has Mr. Pennington controlled all of the land from your boundary line in this tract?

A - The bottom land he has.

Q - What about the other land?

A - It has been principally laying out.

Q - Who controls it and apparently owns it?

A - The old man Pennington has been owning it all the time. I think it belongs to A. N. Pennington.

Q - What do you mean by "all the time?"

A - What time I have been there; and he owned it before.

Q - Did you ever rent any of the tract Mr. Pennington claims exclusive of the land you now own, exclusive of the tract you purchased of Mr. Carter?

A - Yes, sir; one year.

Q - Whom did you pay the rent to?

A - To A. N. Pennington.

Q - Have you since you bought of Russell, rented ~~to~~ of Pennington?

A - Yes, sir.

Q - How many years have you rented of Pennington?

A - I just rented one year; last year.

Q - Do you know anything about the division line about which Mr. Pennington and Mr. Carter agreed on.

A - Not more than what Mr. Pennington showed me. There was a fence there that they put up between them.

Q - Did Mr. Carter ever show you the line?

A - I do not remember that he ever did.

Q - Did you understand when you purchased of Russell that Mr. Carter owned any of that tract?

A - I understood he owned that boundary there; that that was his tract of land there that I bought of Russell.

Q - That that was the half he got in the division of Pennington?

A - Yes, sir.

Q - Did you ever hear Mr. Carter say anything about this?

A - I heard him say something or another about it once; I forget how he did commence it now, he was talking about it and said that he had gotten a deed for one-half interest in it

and he gave Bob Pennington Five Dollars to write him a one-half interest in it -- the planing mill property.

Q - Had he and Pennington divided the land at that time?

A - Yes, sir; that is after he traded this piece of land that I am in possession of now; after he had traded with Russell.

Q - Did you ever hear him say anything about it before the division with Pennington?

A - No, sir.

Q - You say Mr. A. N. Pennington has controlled the land ever since you have been there?

A - Yes, sir; since I have been there.

Q - Is it generally known or not about the vicinity of this land who owns all of the planing mill tract except the part that you own? Who is regarded as the owner of it?

A - I suppose A. N. Pennington owns it, that is my understanding.

Q - He lives on it?

A - No, sir; I do not suppose that he lives on what is called the planing mill property. I am not acquainted with the boundary; I do not know how much there is of it.

Cross Examination,

None.

And further this deponent sayeth not.

Signature waived.

William Pennington, another witness of lawful age,
being first duly sworn, deposes and says:

By Mr. Morison -

Q - Are you in possession of any of the planing mill
tract of land?

A - Yes, sir.

Q - How much of it?

A - Well, all of it I reckon, except five or six
acres. It might be a little more and maybe not that much.

Q - Who is in possession of the five or six acres you
refer to.

A - Mr. Cauffman.

Q - From whom did he purchase?

A - From My son-in-law, Russell.

Q - From whom did Mr. Russell purchase?

A - I suppose from Mr. John Carter.

Q - Have you ever seen the deed Carter made to Russell?

A - I think I have seen it.

Q - How much land did it purport to convey?

A - I cannot say that it gave the number of acres;
it gave the boundary. It commenced at the Bob Branch and
ran down the river to a stake and with the Plank fence a
straight line to the coal road, and with the coal road
to the ^{point} Gas line and down with the ^{line} Gas line to the beginning.
That was the boundary.

Q - How long have you been in possession of the rest of the tract?

A - It was in 1897. I got the rents that year; I was not in possession that year.

Q - Have you been in possession of it ever since?

A - No, sir; I got part of the rent the next year and Carter he rented ^{of} Henry Penningtons above the road and he paid Henry the rent.

Q - You purchased of J. D. Pennington?

A - Yes, sir.

Q - Did you ever rent any of this tract of land to Mr. John M. Carter?

A - No, sir. I rented to John Cauffman.

Q - Did Henry Pennington ever rent any of it to Carter?

A - Yes, sir; one year.

Q - What year was that?

A - 1898, and that winter he sold it to his grand-mother, or his father did for him.

Q - Do you remember when Carter lived on the eastern end of the farm?

A - He lived on it the year he rented of Henry Pennington. I think it was very little more than a year; that is my recollection.

Q - Where did the line, when Carter lived on the eastern end of the place, run, as dividing his land from your land?

A - I gave you that a while ago when I gave the boundary.

Q - Did Carter claim any more land?

A - Not to my knowledge.

Q - How long after this until he made claim to some of the remainder.

A - Well I could not tell you; it must have been some four or five years. I dug coal on it in 1898, and then again three years after that I dug coal there again.

Q - Did Carter make any objection to your digging coal?

A - Not that I ever heard tell of.

Q - Have you, since you moved on the land, used and controlled it as you pleased?

A - Yes, sir. I cut timber on it and paid a part of the money, or had it done.

Q - Have you paid taxes on it?

A - We did until Alex got it.

Cross Examination by Mr. Carter.

Q - Did you ever receive any notice not to dig any in that coal?

A - No, sir; never did; never heard of any.

And further this deponent sayeth not.

Signature waived.

I, Charles C. Bales, a notary public for the County of Lee, in the state of Virginia, do hereby certify that the foregoing depositions of John M. Carter, E. F. Carter, Mary E. Carter, J. A. Cauffman and William Pennington were sworn to and taken before me in my county and state aforesaid, at the time and place and for the purposes mentioned in the caption.

Given under my hand this the 31st day of August, 1908.

Charles C. Bales

Notary Public for Lee County, Virginia.

All of the within depositions are excepted
to by the Complainants because of
the insufficiency of the notice given
and hereto attached. It is directed
to and served only on J. M. Carter
None of the other Complainants having
any notice whatever.

J. C. Hall p. 7

ORIGINAL

H2508jn4
File 233

TO John M. Carter

You are hereby notified that the undersigned will, on the 31st day of August, 1908, between the hours of 9 a. m. and 6 p. m., at the law offices of Mr. E. W. Pennington, at Pennington Gap, Lee County, Virginia, proceed to take the depositions of John W. Carter and others, to be read as evidence in a certain suit in chancery now pending in the Circuit Court of Lee County, Virginia, wherein you are Plaintiff and the undersigned is Defendant.

If, for any reason the taking of the said depositions be not commenced on the aforesaid date, or if commenced, are not concluded, then the taking of the same will be adjourned from day to day at the same time and place hereinbefore mentioned until the same are completed.

This the 24th day of August, 1908.

W. H. Pennington

ORIGINAL

Executed by delivering a true copy of the within notice
to Jah. Mc Cartee at 7 Blackam in Lee County,
Virginia, on the 29 day of August, 1908.

Given under my hand this the 31 day of August, 1908.

E. S. Stapleton D.S. for
W. J. Tucker
S. J. C.

Subscribed and sworn to before me this 31 day of
August, 1908.

Notary Public.

IRVINE & MORISON
ATTORNEYS AT LAW
BIG STONE GAP, VA.

John M. Carter, Plff.
vs. { Depositions
for Defendant -
William Pennington, Deft.

Filed Sept. 5, 1908.
H.C.P. Ewing
Clerk.

Notary Fee \$1.50 Paid -

J. M. & E. F. Foster }
vs. } in Chancery,
W. H. Pennington et al }

(1) That part ^{of} answer of W. H. Pennington, in the above styled cause, included between lines numbers 4 and 53 beginning with the words "Respondent denies" etc, and ending with, "of the said tract" ^{is excepted to by the complainants}. Because it attempts to attack collaterally a decree of the Court.

(2) That part of said answer included between lines 61 and 79 is excepted to, because it shows no matter or grounds of defence, relying upon possession, as a defence without alleging it for a period of over ten years.

J. C. Noel, Counsel
for plaintiffs.

J. M. & E. F. Carter
vs J. N. Cheney

W. H. Pennington & al
Exceptions to Verdict
of J. N. Pennington

This Deed, made this 16 day of November 1899, between
Robert T. Pennington
Special Commissioner, as hereinafter set forth, party of the first part, and John
M. Carter, of the County of Lee
State of Virginia, party of the second part:

WHEREAS by a decree of the Circuit Court of the County of Lee
entered on the 17th day of November 1897, in the chancery cause entitled
Greer Machinery Co. vs. J. D. Pennington
therein depending,
it was, among other things, adjudged, ordered and decreed that Robert T.
Pennington, who ~~was~~ ^{and private sales} thereby appointed Special Com-
missioner, for the purpose, shall sell by public auction, after certain advertisement, and upon cer-
tain terms in the said decree fully set forth, certain real estate therein described; and

WHEREAS the said Robert T. Pennington, ~~is~~

pursuant to the said decree, did on the 2nd day of July 1898, after having
duly advertised the same in accordance with the terms of the said decree, ~~offer for sale by public~~
~~sale~~ ^{all by private} the following described real estate to-wit: a one half interest

in the J. D. Pennington, 30000 mill tract, conveyed
by William Pennington & wife to J. D. Pennington by deed
bearing date the 18 day of Jan'y 1894, to which
said deed reference is made for a more
particular description of said land.

At which sale the said John M. Carter ~~made the last and~~
highest bid therefor, and became the purchaser thereof at the price of One Hundred
and Fifty dollars; and

WHEREAS the said sale was duly reported to the Court by the said Special Commissioner, and

was by another decree, entered in the said cause on the 16th day of June 1898, by the said Court, approved and confirmed; and

WHEREAS the said John M. Carter hath paid the whole of the said purchase money, which payment was duly reported to the said Court; and whereupon by another decree, entered by the said Court in the said cause on the 16th day of Nov. 1899, the said Robert R. Pennington was appointed Special Commissioner to execute and deliver to the said John M. Carter

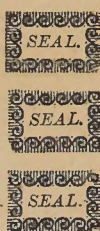
a good and sufficient deed, with special warranty conveying the said real estate to him the said Carter in fee simple:

NOW, THEREFORE, THIS DEED WITNESSETH, That for and in consideration of the premises, and in obedience to the said last mentioned decree, the said Robert R. Pennington

Special Commissioner as aforesaid, do grant unto the said John M. Carter with special warranty, the real estate hereinbefore fully described.

Witness the following signature and seal :

Robert R. Pennington,



State of Virginia, County of Lee, to-wit:

I, B. M. Morgan, Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that Robert R. Pennington whose name is signed to the writing hereto annexed, bearing date on the 16th day of November 1899, has acknowledged the same before me in my County aforesaid. Given under my hand this 16th day of June 1901

B. M. Morgan

In the Court Clerk's Office of the of the day of 189:

This deed was this day presented to me in my said office, and, with the certificate annexed, admitted to record at o'clock M.

Teste:

Clerk.

Exhibit "A."

FORM No. 6.

John H. Pennington

Special Commissioner

to { DEED OF
BARGAIN AND SALE.

John M. Carter

189

Presented in office and, with
certificate, admitted to record at
o'clock M.

Clerk.

Recorded--Deed Book

Page

Clerk's Fee, - - - - \$

Tax, - - - -

This Deed made this 20 day of June 1902
between John M. Carter and Mary E. Carter his
wife parties of the first part and E. L. Noel
party of the second part and all of Lee County
Virginia. Witnesseth: That for and in
consideration of the sum of fifty dollars
in hand paid, the receipt of which is
hereby acknowledged the said parties of
the first part do grant, bargain, sell,
and convey unto the party of the second
part, with covenants of general warranty, an
undivided fourth interest in that certain
tract or parcel of land situate and being
in the Pocket Country in said County of
Lee, on the north fork of Powell's River, and
known as the J. D. Pennington 30 acre
Mill tract, and which was conveyed by deed
bearing date the 18 day of January 1894,
from William Pennington and wife to J. D.
Pennington, and to which deed reference
is hereby made for a more particular
description of said land, and being also
the same land one half of which was conveyed
by Robert L. Pennington Comr. to the said
John M. Carter by deed bearing date the
16 day of November 1899, to have and to hold
~~undivided one fourth interest in the said~~
the said tract or parcel of land together
with all the appurtenances unto the said
E. L. Noel, her heirs and assigns forever.

But it is understood, that whereas, the said
John M. Carter & wife have heretofore sold
unto C. D. Russell, about three acres of said

tract of land, that this deed shall be
construed to mean one half of one half
of said tract of land, less the interest of
the said C. D. Russell. Witness the
following signatures and seals, day and year
first above written.

John ^{his} M. Carter (seal)
Mary ^{mark} E. Carter (seal)

Virginia, Lee County Court:

J. Albright a Notary Public for the
County of Lee in the State of Virginia do
certify that John M. Carter and Mary
E. Carter whose names are signed to
the foregoing deed bearing date of the
30 day of June 1902, have acknowledged
the same before me in my county
aforesaid. Given under my hand and seal
the 30 day of June 1902

Albright Notary Public
My Commission Expires Dec 14 1905

E. Whitaker, C.

E. G. Noel
From Deed
John M. Carter & wife

In the Clerk's Office of the Circuit Court of the County of
Lee.

John M. Carter & E. F. Carter
against

Plaintiff S,

In Chancery

W. H. Pennington

Defendant .

This day

J. B. Bell

personally appeared

before me,

A. B. Munsey

Clerk of the said Court,

and being duly sworn, made oath that

W. H. Pennington

defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this

14th day of April

1892.

A. B. Munsey Clerk

Geo. M. Carter et al

vs. }

AFFIDAVIT FOR ORDER
OF
PUBLICATION.

W. H. Permington

J. C. Noel p. q.

Filed April 14th 1902
A. B. Munsey Clerk

THE COMMONWEALTH OF VIRGINIA:

TO THE SHERIFF OF THE COUNTY OF LEE, GREETING;

We Command You That You Summon

Pearl Hersey, Donald Duncan
Myrtle Duncan & Morgan
Lee

to appear before the Judge of our Circuit Court of the County of Lee, at the Courthouse thereof, on the
day of Sept 8 1928, to testify and the truth to say in behalf of the Comith
in a certain matter in controversy in our said court before the said Judge depending and undetermined between....

Comith, Plaintiff....., and
Morgan Osborne, Defendant.....

And this you shall in no wise omit under the penalty of 100 pounds Sterling. And have then and there this writ

Witness, J. M. Smith; Clerk of our said Court, at the court house the 29 day of Aug 1928

and in the 15 28 year of the Commonwealth

J M Smith CLERK

BY..... D. C.

165

Comith

SUBPOENA for
WITNESS

VS.

ADD

Margan Osborne

Lee County Circuit Court

the

day of

19

18 Sept
28

Executed Sept
15th 1928 By

Comm.
Pearl Persing.
Tone Benson
Morgan Lee

Max Yeary, D.S.

In the Clerk's Office of the Circuit Court of the County of
Lee on the 14th day of April 1902

John M. Loarter & E. F. Loarter
against

Plaintiff &

In Chancery

W. H. Pennington

Defendant.

The object of this suit is to have partitioned among the parties entitled thereto, the following described tract of land situated in Lee County in the Pocket Country on the North fork of Powell's River and supposed to contain about 30 acres more or less, and known as the "Mill tract" and being the same land conveyed by William Pennington and wife to J. D. Pennington by deed bearing date on the 18th day of January 1894, to which deed reference is hereby made for a more particular description of said land, and which was sold by R. L. Pennington Special Commissioner in the Chancery Cause of Greer Machinery Company against J. D. Pennington on the 2nd day of February 1898, and purchased by the said John M. Loarter and W. H. Pennington.

And an affidavit having been made and filed that the defendant

W. H. Pennington

is ^a not resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the Pennington Gap News, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the County Court.

A copy—Teste:

John A. Hall

p. q.

A. B. Mursey Clerk.

Jos M Coaster et al

vs. {

ORDER OF
PUBLICATION.

W. H. Pennington

— STATEMENT —

Pennington Gap, Va.

190

Mr.

In Account with

Pennington Gap News

I L. M. Smith Editor of the Pennington
Gap News a Weekly Newspaper
published at Pennington Gap, Virginia,
do Certify That the appended order of
publication from the Circuit Court
of Lee County, in the Case of,

John M. ^{3d} of E. F. Carter, Plf's
vs.

W. H. Pennington, Def.

} In Charge

has been published for four successive
weeks in my paper, beginning
April 25 1902 and ending May
15 1902

L. M. Smith

This May 20 1902

Editor

RECEIVED

1875

1875

RECEIVED

#111.
\$5.00

In the Clerk's Office of the Circuit Court of the County of
Lee on the 14th day of April 1902.

John M. Carter & C. F. Carter
against

Plaintiffs,

In Chancery

W. H. Pennington

Defendant.

The object of this suit is to have partitioned among the parties entitled thereto the following described tract of land situated in the County of Lee in the "Pocket Country" on the North-fork of Parwell's River and supposed to contain about 30 acres more or less, and known as the "Mill tract" and being the same land conveyed by William Pennington and wife to J. D. Pennington by deed bearing date on the 18th day of January 1894, to which deed reference is hereby made for a more particular description of said land, and which was sold by R. L. Pennington, Special Commissioner in the Chancery Cause of Greer Machinery Company against J. D. Pennington on the 2nd day of February 1898, and purchased by the said John M. Carter and W. H. Pennington

And an affidavit having been made and filed that the defendant

W. H. Pennington

is ^a not resident of the State of Virginia, it is ordered that he do appear here within fifteen days after due publication hereof, and do what may be necessary to protect his interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the Pennington Gap News, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the County Court.

A copy—Teste:

J. C. Noel

p. q.

A. B. Mursey Clerk.

FORM NO. 301.

John M. & F. Carter

US. {

ORDER OF
PUBLICATION.

W. H. Pennington

COMMONWEALTH OF VIRGINIA:

To the sheriff of Lee county, Greeting:

I hereby command you to summon John M. Carter to appear before me at the office of J.C. Noel, in the town of Pennington Gap, Va., on the 14th day of September, 1904, to give evidence on behalf of the defendants, in a certain suit in chancery pending in the circuit court of Lee county, Virginia, between J.M. Carter et al. plaintiffs and W.H. Pennington et al. defendants, and this he shall in no wise omit in the penalty of \$100. And then and there make return on this summon.

Given under my hand this the 14th day of September, 1904.

666

Charles Summers - M.P.

Executed Sept 18 1904

By Sumner J. J. McQuate notary
C. Settleton D. S. for P. M. Ball

937

A. B. S. C.

Witnessed and signed this 18th day of September, 1904.

Witness.

and then and there make return on it to

the court as aforesaid and this he must do at once

and the court shall be satisfied with the return and

the court shall be satisfied with the return and

the court shall be satisfied with the return and

the court shall be satisfied with the return and

the court shall be satisfied with the return and

the court shall be satisfied with the return and

COMMONWEALTH OF MASSACHUSETTS:

John M. Carter

25 1/2 Du Chay.

W. H. Pennington et al.